

Updated
1/2014

Guardians Ad Litem Skills-Based Handbook

A Guide to Guardian Ad Litem Work in Wyoming's Juvenile Courts



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Acknowledgments

Thanks to the following guardians *ad litem* for their assistance in writing, reviewing, and guiding the creation of this handbook: Dan Wilde, Cynthia Sweet, Jennifer Reece, Toni Britton, and Aaron Hockman. Thanks also to Eydie Trautwein for her assistance in writing and reviewing this content, and to Dona Playton for her assistance on the domestic violence section.

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This handbook was created in partnership between the Wyoming Guardian Ad Litem Program (GAL Program) and the Wyoming Supreme Court Children’s Justice Project using state and federal funds. The Children’s Justice Project provided funds for this handbook in accordance with a United States Department of Health and Human Services, Administration for Children and Families Court Improvement Grant, authorized under provisions of Section 438 of the Promoting Safe and Stable Families Act. The points of view expressed in this handbook are those of the authors, and do not necessarily represent the official position or policies of the Wyoming Supreme Court and/or the Children’s Justice Project.

This publication is intended to provide guardians *ad litem* (GAL) with current and accurate information about juvenile law and related topics. The information in this handbook, however, may not be sufficient in dealing with a particular legal problem, and the authors do not warrant or represent its suitability for such purpose. Guardians *ad litem* or others using this handbook do so with the understanding that the information published in this handbook should not be relied upon as a substitute for independent legal research to original sources of authority, the advice of a lawyer, or both.

Guide to the Handbook



This handbook is a skills-based handbook that outlines the steps and activities required for you to act as a GAL, along with references to other resources that explore these issues in more depth. It is not meant to reduce to writing everything you must know as a GAL.

This handbook is organized into three parts. The first and third parts are applicable to all GALs within the GAL Program, regardless of the type of proceeding. Part Two is divided into the

four distinct types of proceedings handled by the GAL Program. Therefore, Part Two does not need to be read in its entirety. It is merely meant to be a reference for the type of proceeding the GAL is appointed to.

At the beginning of each part, you will find a **Master Checklist** outlining the contents of each part with links to the applicable content of the handbook. This checklist outlines each separate issue, activity, or duty of the GAL, and includes a brief description and link to the section in the manual where the issue, activity, or duty is described in more detail. The **Return to Checklist** link takes you back to your previous place in the Checklist. Should you need more information on the material presented in each section, refer to the **Need More? Footnotes** used in each section. The **Need More? Footnotes** provide additional resources and references on the information presented in each section.

The handbook is written in second person, directly addressing GALs; all information pertains directly to them, not to other stakeholders. At times this language may seem pointed, but is merely used to ensure engagement and proper understanding from the reader. The handbook is also meant to provide best practices, not the minimum requirements for a GAL. The GAL Program expects you to follow best practices in your representation of your clients.

If you are viewing this handbook with Microsoft Word software, the hyperlinks in each Master Checklist will direct you to the referenced section. If viewing this handbook on paper, page through the document by using the section numbers provided throughout the handbook.

All current Panel GALs will be provided with the updated package and replacement pages as this handbook is updated. These can also be found on our website at <http://gal.wyo.gov>. If you have questions, please contact the GAL Program Administrator, Dan Wilde, at (307) 777-7480 or dan.wilde@wyo.gov.

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Master Checklist



Part One: Wyoming Guardians *Ad Litem* and Juvenile Court

Section One: The Role of a Guardian *Ad Litem* in Wyoming

- ☐ **DETERMINE YOUR ROLE IN THE PROCEEDING: HYBRID MODEL OR BEST INTEREST**
Understand which of the four types of attorney roles you are appointed to in the proceeding, and the differences between each. For more information, see [sections P1-1.00.00 through P1-1.01.02](#).
- ☐ **MAINTAIN PROPER ROLE BOUNDARIES AND BE A ZEALOUS ADVOCATE FOR YOUR CLIENT**
Maintain your role and begin as a neutral evaluator, but once you have formed your opinion as to the client's best interest, zealously advocate for your client. For more information, see [sections P1-1.02.00 through P1-1.03.00](#).
- ☐ **COLLABORATE WITH THE CASA AND DFS CASEWORKER (IF APPLICABLE)**
Collaborate with other case stakeholders, while ensuring your role and duties remain independent. This includes your involvement on multidisciplinary teams. For more information, see [sections P1-1.04.00 through P1-1.04.02](#).

Section Two: GAL Program History, Structure, Rules, and Policies

- ☐ **UNDERSTAND THE GAL PROGRAM HISTORY**
Understand the history of both the GAL Program and the history of GALs in Wyoming. For more information, see [sections through P1-2.00.00 through P2.01.02](#).
- ☐ **MAINTAIN EXPERT KNOWLEDGE OF THE GAL PROGRAM RULES AND POLICIES**
Maintain current and expert knowledge of the GAL Program Rules and Regulations, as well as the GAL Program Policies in order to represent your clients properly and stay in compliance with your contract/employment. For more information, see [sections through P1-2.02.00 through P1-2.02.02](#).
- ☐ **UNDERSTAND GAL PROGRAM PROCEDURES**
Understand the GAL Program procedures for cases, payments, and more. Know who to call, why to call, and when to call. For more information, see [sections P1-2.03.00 through P1-2.03.01](#).

Section Three: Independent Investigation

- ☐ **CONDUCT AN INDEPENDENT INVESTIGATION**
Ensure you are conducting an independent investigation of the case on behalf of your client(s). This does not preclude collaboration. For more information, see [section P1-3.00.00](#).

- ☐ **CORRECTLY ASCERTAIN AND DETERMINE YOUR CLIENT'S BEST INTERESTS**
Use objective criteria to determine your client's best interests, which should be child and case specific. For more information, see [section P1-3.01.00](#).
- ☐ **OBTAIN ACCESS TO ALL NECESSARY RECORDS**
Use the legal pleadings and tools at your disposal to gain access to needed records, even if protected by federal laws, such as substance abuse and educational records. For more information, see [sections P1-3.02.00 through P1-3.02.02](#).
- ☐ **COMPLETE A GAL REPORT WHEN STRATEGICALLY APPROPRIATE**
When it is in the best interests of your client, complete a GAL report, furnish it to the parties for signature and, once all signatures have been obtained, file the report with the Court. For more information, see [section P1-3.03.00](#).

Section Four: Ethical Obligations and Concerns

- ☐ **OPERATE UNDER A NORMAL ATTORNEY-CLIENT RELATIONSHIP**
Understand that there is a presumption of a normal attorney-client relationship between the GAL and child. For more information, see [sections P1-04.00.00 through P1-04.01.01](#).
- ☐ **KNOW THE BOUNDARIES OF CONFIDENTIALITY AND PRIVILEGE WHEN ACTING AS A GAL**
Your disclosure of confidential information received from your client is only allowed in certain situations. You should take care to safeguard it and your attorney work product. For more information, see [section P1-4.01.02](#).
- ☐ **ACT FIRST AND FOREMOST AS THE CLIENT'S ATTORNEY**
A lawyer must act with commitment and dedication to the interests of the client and with zeal in advocating on the client's behalf. For more information, see [section P1-4.01.03](#).
- ☐ **ENSURE YOU ARE A COMPETENT GAL**
Being competent is your ethical obligation as a GAL. Knowing the laws, regulations, stages of child development, available services, motions practice, and the case helps ensure you will act ethically in your representation. For more information, see [sections P1-4.02.00 through P1-4.02.02](#).
- ☐ **BEWARE OF CONFLICTS OF INTEREST**
Conflicts of interest may arise in your representation of children in Juvenile Court, especially in the representation of siblings. Acceptance of a waiver from your client for this conflict of interest is problematic. For more information, see [section P1-4.03.00](#).
- ☐ **ENSURE YOUR COMMUNICATIONS WITH REPRESENTED PARTIES IS APPROPRIATE**
Be aware of the legal and ethical rules surrounding your communications with represented parties, such as parents or Department of Family Services (DFS). For more information, see [section P1-4.04.00](#).

Section Five: Communicating and Interviewing Your Client

- ☐ **BUILDING RAPPORT**
Meet with your client personally in a setting that is comfortable for the client, with considerations of their age and placement situation. For more information, see [sections P1-5.00.00 through P1-5.01.00](#).

☐**EXPLAIN YOUR ROLE, THEN QUESTION AND INTERVIEW YOUR CLIENT**

At the first meeting, explain your role as a GAL to the client, in age appropriate language, and ensure that he or she knows what information will be kept confidential and what will not, such as mandatory reporting of abuse and neglect. Be aware of the types of questions and interviewing styles you can use. For more information, see [sections P1-5.02.00 through P1-5.02.02](#).

☐**WATCH YOUR BOUNDARIES AND RELATIONSHIPS WITH CLIENTS**

Beware of potential relationship boundary issues with clients, and follow all laws and rules. For more information, see [sections P1-5.03.00 through P1-5.03.01](#).

Section Six: Federal Rules That Govern Your Work☐**KNOW THE FEDERAL LAWS THAT IMPACT YOUR WORK AS A GAL**

The Juvenile Court legal area has numerous federal laws that need to be understood and followed, including statutory law, case law, and interstate law and compacts. For more information, see [sections P1-6.00.00 through P1-6.06.02](#).

Section Seven: Court Rules That Govern Your Work☐**KNOW AND UNDERSTAND THE COURT RULES**

Each case in Juvenile Court has one or more applicable Court rules that you must know and understand. The Rules of Procedure for Juvenile Court are most important, as they affect all of your cases in Juvenile Court, and deal with things such as discovery and timelines. For more information, see [sections P1-7.00.00 through P1-7.00.01](#).

**Part Two: Types of Proceedings***Sections One, Two and Three: Abuse/Neglect Proceeding, Child In Need of Supervision Proceeding, and Delinquency Proceeding*

The checklist below is the same for Sections One, Two, and Three of Part Two of the handbook. For more information on Section One, see [sections P2-1.00.00 through P1-1.10.00](#). For more information on Section Two, see [sections P2-2.00.00 through P2-2.03.09](#). For more information on Section Three, see [sections P2-3.00.00 through P2-3.03.08](#).

☐**REVIEW THE APPOINTMENT ORDER**☐**CLEARLY UNDERSTAND YOUR ROLE**☐**MEET YOUR CLIENT**

	GET APPROVAL FROM REPRESENTED PARTIES TO MEET WITH THEIR CLIENTS (I.E. THE PARENTS)
	MEET THE FAMILY AND ENSURE A DILIGENT SEARCH FOR THE NON-CUSTODIAL PARENT AND FAMILY IS BEING CONDUCTED BY DFS
	REVIEW AND REQUEST DISCOVERY
	REVIEW THE CASE FILE AND RECORDS
	LOOK FOR INDIAN CHILD WELFARE ACT (ICWA) OR DOMESTIC VIOLENCE IMPLICATIONS
	TALK TO THE DFS WORKER
	REQUEST A JURY, IF NEEDED
	INDEPENDENTLY INVESTIGATE THE CASE (MAY INCLUDE TALKING TO PROVIDERS, REVIEWING RECORDS, OBSERVING VISITATIONS, ETC.)
	CONTINUE TO MEET WITH YOUR CLIENT (REGARDLESS OF AGE OR PLACEMENT LOCATION)
	MEET WITH THE FOSTER FAMILY, IF APPLICABLE
	CONDUCT HOME VISIT(S)
	DEVELOP A THEORY OF THE CASE
	DETERMINE YOUR CLIENT'S BEST INTERESTS
	MAKE APPROPRIATE REFERRALS
	GET A COPY OF THE DFS CASE PLAN
	ATTEND ALL MTD'S AND COURT HEARINGS
	USE LITIGATION TOOLS AT THE HEARINGS
	DO WHAT IS NECESSARY AND REASONABLE TO REPRESENT YOUR CLIENT'S BEST INTERESTS
	ENSURE THE SAFETY, WELL-BEING, AND PERMANENCY FOR YOUR CLIENT (SEE PART THREE)
	IF THE CHILD IS PLACED OUT OF THE HOME, IF APPROPRIATE, ENSURE VISITATION IS IN PLACE
	BE SURE THE CHILD'S EDUCATIONAL SETTING AND PLAN IS APPROPRIATE, CONTACT THE SCHOOL FOR INFORMATION, AND TALK TO HIS OR HER TEACHERS
	TRACK COLLATERAL JUDICIAL PROCEEDINGS
	WORK WITH THE COURT APPOINTED SPECIAL ADVOCATE (CASA), IF ONE IS APPOINTED
	CONTINUE TO TALK TO CLIENT, FAMILY, FOSTER FAMILY, DFS WORKER, AND INDEPENDENTLY INVESTIGATE THE CASE (ONGOING); ADJUST THEORY OF CASE AND CLIENT'S BEST INTERESTS, AS NEEDED
	ADVOCATE FOR TIMELY PERMANENCY
	ENSURE YOUR CLIENT HAS ACCESS TO INDEPENDENT LIVING SERVICES
	SET YOUR CLIENT AND THEIR FAMILY (BIOLOGICAL OR ADOPTIVE OR GUARDIANS) UP WITH AN APPROPRIATE TRANSITION PLAN (OUT OF JUVENILE COURT AND/OR FOSTER CARE)
	ENSURE YOU KNOW AND FOLLOW THE STATE AND FEDERAL LAWS THROUGHOUT THE PROCEEDING

Section Four: Interstate Compact on Juveniles Proceeding

Below is a checklist specifically for Section Four: Interstate Compact on Juveniles Proceedings. For more information, please see [sections P2-4.00.00 through P2-4.01.02](#).

<input type="checkbox"/>	REVIEW THE APPOINTMENT ORDER
<input type="checkbox"/>	CLEARLY UNDERSTAND YOUR ROLE
<input type="checkbox"/>	MEET YOUR CLIENT
<input type="checkbox"/>	REVIEW AND REQUEST DISCOVERY
<input type="checkbox"/>	REVIEW THE CASE FILE AND RECORDS
<input type="checkbox"/>	TALK TO THE DFS WORKER
<input type="checkbox"/>	INDEPENDENTLY INVESTIGATE THE CASE (MAY INCLUDE TALKING TO FAMILY, PROVIDERS, REVIEWING RECORDS, OBSERVING VISITATIONS, ETC.)
<input type="checkbox"/>	CONTINUE TO MEET WITH YOUR CLIENT (REGARDLESS OF AGE OR PLACEMENT LOCATION)
<input type="checkbox"/>	DEVELOP A THEORY OF THE CASE
<input type="checkbox"/>	DETERMINE THE CLIENT'S BEST INTERESTS
<input type="checkbox"/>	ATTEND ALL COURT HEARINGS
<input type="checkbox"/>	USE LITIGATION TOOLS AT THE HEARINGS
<input type="checkbox"/>	DO WHAT IS NECESSARY AND REASONABLE TO REPRESENT YOUR CLIENT'S BEST INTERESTS
<input type="checkbox"/>	ADVOCATE FOR TIMELY RETURN TO THE CLIENT'S HOME STATE
<input type="checkbox"/>	SET YOUR CLIENT AND CLIENT'S FAMILY (BIOLOGICAL OR ADOPTIVE OR GUARDIANS) UP WITH AN APPROPRIATE TRANSITION PLAN (TO THE HOME STATE)
<input type="checkbox"/>	ENSURE YOU KNOW AND FOLLOW THE STATE AND FEDERAL LAWS THROUGHOUT THE PROCEEDING



Part Three: Topical Areas Applicable to All Proceedings

Section One: Litigation

<input type="checkbox"/>	DEVELOP A THEORY OF THE CASE	<i>The first step is to investigate the facts of the case, then develop your client's case for trial and hearings. For more information, see section P3-1.00.00.</i>
<input type="checkbox"/>	USE ALL OF THE TOOLS IN THE LITIGATION TOOLBOX	<i>Use discovery, motions, experts, and potentially a jury to zealously represent your client. For more information, see sections P3-1.01.00 through P3-1.01.04.</i>
<input type="checkbox"/>	USE YOUR TRIAL ADVOCACY SKILLS	<i>Use the art of trial advocacy and constantly develop this skill for use in the courtroom. For more information, see section P3-1.05.00.</i>
<input type="checkbox"/>	USE CAUTION WITH CHILD-WITNESSES	<i>Understand suggestibility, competency to testify, preparing children to testify, and hearsay exceptions for child witnesses. For more information, see sections P1-3.01.06 through P1-3.01.07.</i>

Section Two: Child Development

- ☐ **UNDERSTAND ATTACHMENT AND BONDING FOR YOUR CLIENTS**
You must have a basic understanding of the key elements needed for attachment bonding and building healthy relationships in order to see potential issues, and to make determinations of best interests. For more information, see [sections P3-2.00.00 through P3-2.01.01](#).
- ☐ **USE APPROPRIATE DEVELOPMENTAL CHECKLISTS TO RAISE RED FLAGS**
You should understand the basics of child development and what to look for during the early years in order to ask for a professional review or intervention. For more information, please see [section P3-2.02.00](#).

Section Three: Mental Health and Substance Abuse

- ☐ **SUPPORT CLIENTS WITH BEHAVIORAL HEALTH NEEDS**
Understand how to support children who currently have, or have had, potential mental health and substance abuse issues. For more information, see [sections P3-3.00.00 through P3-3.02.00](#).
- ☐ **KNOW THE PLACEMENT OPTIONS FOR CLIENTS WITH BEHAVIORAL HEALTH NEEDS**
Understand placement options and alternatives, including home and community-based resources available for children with mental health and substance abuse issues. For more information, see [sections P3-3.03.00 through P3-3.04.00](#).
- ☐ **KNOW THE SERVICES AVAILABLE FOR CLIENTS WITH BEHAVIORAL HEALTH NEEDS**
Be aware of services available in Wyoming for children with mental health and substance abuse issues. For more information, see [sections P3-3.04.00 through P3-3.04.03](#).
- ☐ **ENSURE CHINS CLIENTS WERE APPROPRIATELY DIVERTED BEFORE PETITION WAS FILED**
Be able to reference appropriate Wyoming statutes for CHINS with potential mental health and substance abuse disorders. For more information, see [sections P3-3.00.00 through P3-3.01.01](#).

Section Four: Health Issues and Early Periodic Screening, Diagnosis, and Treatment

- ☐ **HAVE A BASIC UNDERSTANDING OF EARLY PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)**
Understand how to support children in the early screening and identification of potential health issues. Ensure your client has a primary care provider (PCP) or other medical provider that is following the guidelines of EPSDT. For more information, see [sections P3-4.00.00 through P3-4.01.00](#).
- ☐ **ENSURE YOUR CLIENT HAS ACCESS TO MEDICAL CARE**
Identify children requiring healthcare services and ensure children have received appropriate services. Identify next steps for seeking services for children requiring healthcare services and know potential referral sources. For more information, see [sections P3-4.02.00 through P3-4.02.07](#).

Section Five: Developmental Disabilities (DD) Issues and Waivers

- ☐ **UNDERSTAND THE DEVELOPMENTAL DISABILITIES (DD) SCREENING PROCESS**
Understand the screening process used to identify children with potential developmental disabilities, so you'll be better able to refer your clients for services as needed. For more information, see [sections P3-5.00.00 through P3-5.01.00](#).
- ☐ **UNDERSTAND FEDERAL AND STATE DISABILITY PROGRAMS AVAILABLE TO DISABLED CLIENTS**
There are a variety of specialized federal and state disability programs that are available to serve your clients. For more information, see [sections P3-5.02.00 through P3-5.02.02](#).

Section Six: Education

- ☐ **UNDERSTAND THE IMPORTANCE OF EDUCATION AS A SOURCE OF STABILITY**
Education creates a sense of permanency for children, but it is easy for them to lose that sense of comfort if measures are not taken to maintain it. For more information, see [sections P3-6.00.00 through P3-6.01.00](#).
- ☐ **KNOW THE EDUCATION RESOURCES AVAILABLE TO YOUR CLIENTS**
Know the educational resources available to your clients so you can advocate for their best interests, and ensure that they are able to access the services they need. For more information, see [sections P3-6.02.00 through P3-6.05.00](#).

Section Seven: Safety

- ☐ **UNDERSTAND THE SAFETY DECISION-MAKING PROCESS**
Understand the process used to determine whether a child is safe to help you advocate for your clients' best interests. For more information, see [sections P3-7.00.00 through P3-7.05.00](#).

Section Eight: Domestic Violence

- ☐ **UNDERSTAND DYNAMICS OF DOMESTIC VIOLENCE**
As a GAL, it is important to learn the family dynamic and be alert to all interactions and relationships with the child client. For more information, see [sections P3-8.00.00 through P3-8.01.00](#).
- ☐ **REALIZE THAT CO-OCCURRENCE CHILD ABUSE AND DOMESTIC VIOLENCE IS COMMON**
Domestic violence and child maltreatment have traditionally been regarded as distinct forms of violence requiring separate responses. This section recognizes a more holistic approach to address all areas of child abuse, and how to best ensure the child's safety and wellbeing. For more information, see [section P3-8.02.00](#).
- ☐ **SCREEN FOR POTENTIAL DOMESTIC VIOLENCE**
Become familiar with the domestic violence screening process, and the warning signs to look for, which may indicate possible abuse. For more information, see [section P3-8.03.00](#).
- ☐ **KNOW THE GUIDING PRINCIPLES TO ENSURE SAFETY IN DOMESTIC VIOLENCE CASES**
Understand how to identify a threat of danger, and assess the child's safety level with the caregiver. For more information, see [section P3-8.04.00](#).

☐**UNDERSTAND THE LONG LASTING IMPACTS OF CHILD ABUSE**

Understand the symptoms and impacts of repeated or serious injury from abuse. For more information, see [section P3-8.05.00](#).

Section Nine: Immigration☐**BE AWARE OF THE SPECIAL IMMIGRANT JUVENILE STATUS OPTION**

Understand the requirements for a youth to apply for Special Immigrant Juvenile Status (SIJS) to obtain green card residence in the United States so appropriate referrals and assistance can be made. For more information, see [sections P3-9.00.00 through P3-9.01.00](#).

☐**UNDERSTAND THE BENEFITS AND PROTECTIVE ORDERS COVERED UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

Understand what is covered under the VAWA, and special protections for immigrants who have been battered by a spouse or parent. For more information, see [section P3-9.02.00](#).

☐**REVIEW OF IMMIGRATION RELIEF THROUGH THE U AND T VISAS**

The U Visa and T Visa offer immigration relief and services to qualified trafficking victims, and allow eligibility status to gain temporary citizenship in the United States. You should understand the Visa requirements so you can make appropriate referrals. For more information, see [sections P3-9.03.00 through P3-9.03.02](#).

Section Ten: Bias☐**ALWAYS ACT WITH CULTURAL SENSITIVITY**

It is imperative that you are aware of cultural diversity and how to avoid bias or the appearance of bias. For more information, see [sections P3-10.00.00 through P3-10.01.00](#).

☐**BE AWARE OF THE ROLE OF POVERTY IN JUVENILE COURT**

Poverty often plays a major role in youth receiving services in the welfare system. For more information, see [section P3-10.02.00](#).

☐**ASSIST AND SUPPORT YOUR LGBTQ CLIENTS**

You can help LGBTQ (lesbian, gay, bisexual, transgendered, and questioning) youth in the system by providing resource information and support, with understanding that these clients often face increased difficulties. For more information, see [section P3-10.03.00](#).

Section Eleven: Permanency☐**UNDERSTAND THE IMPORTANCE OF PERMANENCY FOR CHILDREN**

Understand how to define permanency and the permanency hierarchy. For more information, see [sections P3-11.00.00 through P3-11.03.01](#).

☐**HOLD PERMANENCY HEARINGS IN ACCORDANCE WITH THE LAWS**

Understand the requirements of the permanency hearing. For more information, see [section P3-11.04.00](#).

☐ IDENTIFY STRATEGIES FOR ACHIEVING PERMANENCY

Identify resources and approaches to permanency, including adoption and guardianship. For more information, see [sections P3-11.05.00 through P3-11.06.00](#).

Section Twelve: Termination of Parental Rights

☐ UNDERSTAND THE GROUNDS FOR TERMINATION OF PARENTAL RIGHTS (TPR)

Understand the circumstances that may lead to a termination of parental rights in order to correctly prepare the case for TPR if it is needed. For more information, see [section P1-12.00.00](#).

Section Thirteen: Appeals

☐ BE INFORMED ABOUT THE APPEAL PROCESS

Understand the details and intricacies of the appeals process. For more information, see [section P3-13.00.00](#).

☐ TAKE APPROPRIATE ACTION DURING THE APPEAL PROCESS

Know how and when to complete specific tasks within the appeals process. For more information, see [sections P3-13.01.00 through P3-13.04.00](#).

Section Fourteen: Other Collateral Judicial Proceedings

☐ BE AWARE OF THE COLLATERAL PROCEEDINGS YOUR CLIENT AND HIS/HER FAMILY MAY BE INVOLVED IN

This includes cases that occur at the same time as the Juvenile Court case or arise out of the Juvenile Court case, such as criminal, protective orders, private custody, adoption, or guardianship proceedings. For more information, see [sections P3-14.00.00 through P3-14.04.00](#).

Section Fifteen: Transitioning from Foster Care

☐ ENSURE TRANSITION AGED YOUTH HAVE INDEPENDENT LIVING SERVICES (ILS)

ILS helps older youth make the transition out of the foster care system and become self-sufficient adults. You should ensure your client has access to these services, and is involved in planning for their future. For more information, see [sections P3-15.00.00 through P3-15.01.00](#).

☐ CONSIDER A PERMANENCY PACT/PLANNING WITH YOUR CLIENT BEFORE TRANSITION

A permanency pact is an option to create an on-going connection between youth and a supportive adult as they transition out of foster care. For more information, see [section P3-15.02.00](#).

Section Sixteen: Non-Adversarial Case Resolution

☐ THE CASE MAY BE REFERRED TO A NON-ADVERSARIAL CASE RESOLUTION (NACR) PROGRAM

Understand that child welfare cases may be referred to and resolved through NACR programs. For more information, please see [sections P3-16.00.00 through P3-16.01.00](#).

**KNOW THE DIFFERENT TYPES OF NACR**

Understand alternatives available, characteristics of the NACR programs, as well as the benefits of these alternative programs. For more information, see [sections P3-16.02.00 through P3-16.02.04](#).

Section Seventeen: Native American / ICWA

**UNDERSTAND THE PURPOSE AND REQUIREMENTS OF THE INDIAN CHILD WELFARE ACT (ICWA)**

Knowing the jurisdictional provisions will allow you to advocate for your client's best interests and to ensure compliance with federal law. For more information, see [sections P3-17.00.00 through P3-17.07.00](#).

Section Eighteen: DFS Case Plans

**REQUEST AND REVIEW A COPY OF EACH CLIENT'S CASE PLAN**

This section provides an overview of the DFS Case Plan, as well as key elements to consider when reviewing each client's case plan. For more information, see [sections P3-18.00.00 through P3-18.02.00](#).

Section Nineteen: Incarcerated Parents in Juvenile Court

**ENSURE YOUR CLIENT HAS APPROPRIATE ACCESS TO AN INCARCERATED PARENT**

Understand the importance of allowing children involved in the legal welfare system access to an incarcerated parent and the importance of DFS conducting case planning with this parent. For more information, see [sections P3-19.00.00 through P3-19.02.00](#).

Section Twenty: Affordable Care Act and Children in the Juvenile Court System

**UNDERSTAND THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (ACA) AND HOW IT IMPACTS YOUR CLIENTS**

This section provides an overview of the ACA, and describes the high-level implications to children in the Juvenile Court system. For more information, see [sections P3-20.00.00 through P3-20.02.00](#).

Part One: Wyoming Guardians *Ad Litem* and Wyoming Juvenile Court Law

Section One: The Role of a Guardian *Ad Litem* in Wyoming

P1-1.00.00

- ☐ **DETERMINE YOUR ROLE IN THE PROCEEDING: HYBRID MODEL OR BEST INTEREST**
Understand which of the four types of attorney roles you are appointed to in the proceeding, and the differences between each.
- ☐ **MAINTAIN PROPER ROLE BOUNDARIES AND BE A ZEALOUS ADVOCATE FOR YOUR CLIENT**
Maintain your role and begin as a neutral evaluator, but once you have formed your opinion as to the client's best interest, zealously advocate for your client.
- ☐ **COLLABORATE WITH THE CASA AND DFS CASEWORKER (IF APPLICABLE)**
Collaborate with other case stakeholders, while ensuring your role and duties remain independent. This includes your involvement on multidisciplinary teams.

Acting as a guardian *ad litem* (GAL) is an extremely difficult, yet rewarding job. The most fundamental aspect of this vocation is an understanding of the role you play in the system and for your clients. "Representing the best interest of a child is a fundamentally different role for a lawyer than representing a competent, adult client."¹ It requires a high level of competency in many areas: the ability to communicate and connect with children of all ages, capabilities, and backgrounds; as well as a specialized skill set to navigate a primarily non-adversarial Juvenile Court system with the same zealotry and trial advocacy an attorney would use in adversarial Court systems.

Four Types *P1-1.01.00*

In the United States, there are four types of child representation in Juvenile Court proceedings. First, there is an attorney to represent the child in the standard attorney-client relationship where the lawyer relies upon the diminished capacity rules of professional conduct if the child is non-verbal or diminished in any way. This is a direct attorney role. Second, there is a pure best interest role, where the attorney presents and advocates solely for what the attorney believes is in the child's best interest. The attorney owes no allegiance to what the child wishes, but the attorney, in forming what the attorney believes to be in the child's best interest, often takes the child's wishes into consideration. Third, there can be two attorneys for each child, one direct attorney and one best interest attorney. Finally, there is a hybrid model, in which one attorney performs both of these functions at one time.

[NEED MORE?](#)

Burman, *Justice for Children*, Section 2.4.

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Section 29.1.

¹ JOHN M. BURMAN, *JUSTICE FOR CHILDREN: MANUAL FOR GUARDIANS AD LITEM IN JUVENILE COURT AND TERMINATION OF PARENTAL RIGHTS CASES* 285 (2010).

WYOMING'S ROLE AND STATUTES FOR GALs *P1-1.01.01*

In Wyoming, it is your duty to represent clients in the hybrid role in abuse/neglect, Termination of Parental Rights (TPR), and appellate proceedings. This means that you must represent the child's wishes and the child's best interests at the same time. Oftentimes, if you counsel the child appropriately and effectively, the child's wishes and the child's best interests will align. Wyoming Statute § 14-3-211(a) sets forth this right of the child to representation by a hybrid model GAL. It states: "The Court shall appoint counsel to represent any child in a Court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child's guardian *ad litem* unless the Court has appointed a guardian *ad litem*. The attorney or guardian *ad litem* shall be charged with representation of the child's best interest."²

In Child In Need of Supervision (CHINS) and Delinquency proceedings, your role as a GAL in Wyoming changes to that of a pure best interest attorney. This is because a child in these two types of proceedings has a right to an attorney who provides direct representation. Wyoming Statutes § 14-6-222(a) and § 14-6-422(a) set forth the right to counsel for all children in CHINS and Delinquency proceedings. Rule 5(A) of the Wyoming Rules of Procedure for Juvenile Courts also states: "The Respondent is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule."³ The child may have two attorneys—one direct attorney and one best interest GAL in certain circumstances. Wyoming Statutes § 14-6-216 and § 14-6-416 state: "The Court shall appoint a guardian *ad litem* for a child who is a party to the proceedings under this act if the child has no parent, guardian or custodian appearing in his behalf or if the interests of the parents, guardian or custodian are adverse to the best interest of the child."⁴

As a GAL in CHINS and Delinquency proceedings, you should ensure that the child understands the right to a direct attorney and is appointed or hires a direct attorney if the child so wishes; his or her representation and the protection of his or her rights are essential. In both CHINS and delinquency proceedings, if the child qualifies financially, a public defender can be appointed to represent the child pursuant to Wyoming Statute § 7-6-112(a)(i).

The hybrid model of GAL representation is defined by the GAL Program Rules and Regulations in Section 2(a). It states:

"These Rules adopt the 'Attorney Guardian *ad litem* Hybrid Model' and is the model referred to whenever 'attorney guardian *ad litem*' is set forth herein. This model provides an attorney to represent the child and instructs the attorney to represent the child's 'best interest.' Rather than taking direction from the client, as is the case in traditional attorney representation of adults, the attorney guardian *ad litem* is charged with forming the client's position by using his/her own judgment as to the child's 'best interest.' The attorney guardian *ad litem* is required to consider the child's wishes and preferences when determining the child's best interest,

² WYOMING STAT. ANN. § 14-3-211(A) (WEST).

³ WYOMING RULES OF PROCEDURE FOR JUVENILE COURT, 5A (2012).

⁴ WYOMING STAT. ANN. § 14-6-216 AND 14-6-416 (WEST).

but he or she is not bound by them, as in the traditional attorney-client relationship. If the attorney guardian *ad litem* determines that the child's expressed preference is not in the best interest of the child, both the child's wishes and the basis of the attorney guardian *ad litem*'s disagreement must be presented to the Court."⁵

As counselor and advisor to the child, you should provide the child with an informed understanding of the child's legal rights and obligations and explain their practical implications. You should explain all aspects of the case and provide comprehensive counsel and advice on the advantages and disadvantages of different case options to assist the child in identifying case goals and making informed decisions. During these discussions, you should address the child's legal rights and interests, as well as concerns regarding the child's safety, health, and welfare.

If the child is pre-verbal or unable to communicate their preferences, the determination of the child's legal interests should be based on the following:

- The laws that are related to the purposes of the proceedings;
- The child's specific needs, and objective best interest determination;
- The goal of expeditious resolution of the case, so the child can remain or return home, or be placed in a safe, nurturing, and permanent environment;
- The use of the least restrictive alternatives available and appropriate for the child.

NEED MORE?

Burman, *Justice for Children*, Second Edition, Sections 2.2, 2.5-2.7.
 Wyoming GAL Program Rules and Regulations, 2(a), (b), (c), (d).
 GAL Program, Policy on GALs in CHINS and Delinquency Proceedings.
Wyoming Stat. Ann. § 14-3-211(a).
Wyoming Stat. Ann. § 14-6-222(a) and 14-6-422(a).
Wyoming Stat. Ann. § 14-6-216 and § 14-6-416.
Wyoming Rules of Procedure for Juvenile Court, 5A (2012).
 Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 29.6.

WYOMING'S SUPREME COURT OPINIONS RE GAL ROLE *P1-1.01.02*

The Wyoming Supreme Court first adopted the hybrid role of GAL representation in 1998 in the *Clark v. Alexander* case. The Court stated:

"While some jurisdictions have required the separation of these roles, a number of Courts have declared the role a 'hybrid,' which necessarily excuses strict adherence to *some* rules of professional conduct. *In Interest of J.P.B.*, 419 N.W.2d 387, 391–92 (Iowa 1988); *In re Marriage of Rolfe*, 216 Mont. 39, 699 P.2d 79, 86–87 (1985), *aff'd* 234 Mont. 294, 766 P.2d 223 (1988). We believe that the costs attending the appointment of both an attorney and a guardian ad litem would often be prohibitive and would in every case conscript family resources better directed to the children's needs outside the litigation process. Thus, we too acknowledge the 'hybrid' nature of the role of attorney/guardian ad litem, which necessitates a modified application of the Rules of Professional Conduct."

Contrary to the ethical rules, the attorney/guardian ad litem is not bound by the client's expressed preferences, but by the client's best interest. If the attorney/guardian ad litem determines that the child's expressed preference is not in the best interest of

⁵ WYOMING GUARDIANS AD LITEM PROGRAM RULES AND REGULATIONS, SECTION 2(A) (2008).

the child, both the child's wishes and the basis for the attorney/guardian *ad litem*'s disagreement must be presented to the Court.⁶

In the same light, the confidentiality normally required in the attorney-client relationship must be modified to the extent that relevant information provided by the child may be brought to the District Court's attention. While it is always best to seek consent prior to divulging otherwise confidential information, an attorney/guardian *ad litem* is not prohibited from disclosure of client communications absent the child's consent. As legal counsel to the child, the attorney/guardian *ad litem* is obligated to explain to the child, if possible, that the attorney/guardian *ad litem* is charged with protecting the child's best interests and that information may be provided to the Court, which would otherwise be protected by the attorney-client relationship.⁷

The Clark decision was affirmed three years later in *Pace v. Pace*. In *Pace*, the Court also restated that the hybrid GAL is an attorney, not a fact witness, and therefore participates in the proceedings as would any other attorney.

[NEED MORE?](#)

Burman, *Justice for Children*, Section 2.1.1.

Clark v. Alexander, 953 P.2d 145.

Pace v. Pace, 22 P.3d 861.

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Proper Role Boundaries *P1-1.02.00*

You are responsible for setting and maintaining the appropriate boundaries with your child clients. Appropriate boundaries and healthy client relationships are especially important when representing minors. You must remember this in order to protect the client, as well as yourself. The Program Rules and Policies, especially the *Policy on Client Meetings and Relationships*, set forth very specific requirements for client meetings, locations, and timing. These requirements will be explored more in other sections of this handbook.

Your role in Juvenile Court can often be blurred due to the nature of the cases and the families with whom you work. Part of your job is to engage the client in a relationship of trust; yet, when working with these child clients, you must maintain clear boundaries to assure professional integrity and responsibility. Your role is not to parent or save the child, but to advocate for the child's needs and best interests in the legal proceeding. To resolve the child client's legal problem in a productive and effective manner, you need to develop a healthy adult relationship with the client while maintaining an objective detachment from the client.

The following behaviors are absolutely prohibited by the GAL Program:

- Sexual relations with the client or a member of the client's family;
- Initiating gratuitous talk about sex;
- Physical contact with sexual intent;
- Rough handling;
- Receiving money or services from the client for yourself;
- Accepting a client with whom you have had a business relationship;
- Accepting a client that is or was a member of your family;
- Accepting a client you know or have known socially;
- Giving the client a purely personal e-mail, personal cell number, home address, or home phone number;

⁶ *IN RE MARRIAGE OF ROLFE*, 699 P.2d 79, 86-87 (1985)

⁷ *CLARK V. ALEXANDER*, 953 P.2d 145, 153-54 (WYO. 1998).

- Bringing the client to your home for any reason and/or introducing the client to your family members;
- Spending social time with the client at your home, or frequent time with a client at various restaurants, movie theaters, or other public places outside of the client's home where the meeting purpose is purely social and not case related;
- Freely sharing and discussing your own personal experiences or intimate details about yourself with the client;
- Spending your own personal funds to support the client's needs; or
- Engaging in the use of drugs and/or alcohol with the client.

[NEED MORE?](#)

Burman, *Justice for Children*, Section 2.3.
Wyoming GAL Program, Rules and Regulations.

Neutrality versus Zealous Advocate *P1-1.03.00*

You must balance the ethical duties of neutrality and advocacy. Although you begin a case as an independent, neutral evaluator, once you have established what is in the child's best interests, you must become a zealous advocate. Your client must have an attorney advocating for his or her needs. Therefore, you cannot remain a neutral evaluator. You must advocate for your client in the Court proceeding.

[NEED MORE?](#)

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 29.7.

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Collaboration with CASA and Caseworkers *P1-1.04.00*

ROLES & DUTIES *P1-1.04.01*

Your role is significantly different than that of a social worker or other advocate working with the child client or family because your goal is to help the client work through a legal problem, rather than facilitate learning and change in the client. Always keep in mind that your role and activities should be focused on legal advocacy for the client. This means that you are aware of what services the client may need so you can advocate for them through the legal process.

COURT APPOINTED SPECIAL ADVOCATE (CASA) VOLUNTEER

Not all Wyoming counties have CASA Programs or volunteers. Furthermore, Wyoming Court Rules limit the CASA's appointments to abuse/neglect cases only, but each CASA Program differs as to which abuse/neglect cases they are assigned to, and how their program operates and collaborates within the Juvenile Court system. It is best to ask other stakeholders or GALs about the CASA Program to determine the local practices. Currently, there are CASA Programs in the following Wyoming communities: Laramie, Natrona, Sheridan, Johnson, Campbell, and Park Counties.

A CASA volunteer's role may vary depending on the Court's expectations and order. CASAs advocate for the best interest of the child in all aspects of an abuse/neglect case including safety, permanency, and well being; either independently or in conjunction with the GAL. The CASA volunteer may independently

research the child and family's circumstances (not the abuse/neglect allegations) while working with the Multidisciplinary Team (MDT) to create stability for the child and achieve permanency outcomes in a timely manner. Additionally, the CASA volunteer may bring information to the MDT from service providers, family members, and other sources that are not represented on the team.

A CASA volunteer can be a key asset to you, since a CASA can testify regarding something they witnessed, while you cannot. Also, the CASA volunteer can advocate for and find resources for a client that you are unable address in the legal proceeding. The Juvenile Court Rules strongly encourage GALs and CASAs to collaborate on cases.

NEED MORE?

Wyoming Rules of Procedure for Juvenile Court, Rule 8.
Burman, *Justice for Children*, Section 6.0.
CASA Website, www.casaforchildren.org.

DEPARTMENT OF FAMILY SERVICES (DFS) CASEWORKER

The DFS Caseworker's role is devoted to the family unit, in addition to the child. Caseworkers are responsible for evaluations, assessments, and family case planning. They have difficult jobs with many laws and requirements to juggle—both state and federal. A close, working relationship with the DFS caseworker benefits the GAL; however, be careful not to perform the caseworker's duties. For more information on the specific activities required of the caseworker, please see DFS policy manuals.

NEED MORE?

DFS Policy Manuals, available at <http://dfsweb.state.wy.us/about-us/dfsolicy.html>.

MULTIDISCIPLINARY TEAM MEETINGS

Wyoming statutes require the Juvenile Court to appoint an MDT in all child abuse and neglect, child in need of supervision (CHINS) and delinquency cases within ten days of the filing of a petition. Pursuant to the statutes, MDTs shall review the child's personal and family history; school, health and DFS records; and any other pertinent information, for the purpose of making written recommendations to the Juvenile Court in child abuse and neglect, CHINS and delinquency proceedings pursuant to Wyoming Statutes (W.S.) §§ 14-3-427(e), 14-6-427(e) and 14-6-227(f). In delinquency cases, the MDT shall formulate recommendations consistent with the purposes of the Wyoming Juvenile Justice Act, which promotes a balanced and restorative approach that addresses victim reparation, accountability and competency development. In formulating recommendations, the MDT shall give consideration to the best interests of the child, the best interests of the family, and the most appropriate and least restrictive case planning options available as well as costs of care.

The formation of an MDT is intended to ensure that all the circumstances impacting the child and family, especially those related to the potential strengths and needs, are fully identified and considered in formulating recommendations for the Court. To make good Court recommendations, the team should include family members and professionals who have particular knowledge of the child and family. Before making Court recommendations, the MDT should identify the strengths of

the child and family. Taking into consideration the family's strengths, the MDT should determine the child's and family's needs and identify the services and supports likely to address those needs. The MDT should also recommend measurable goal(s) designed to track progress in addressing the family's pertinent issues. The MDT should recommend the least restrictive means of attaining the goal(s) and then closely monitor the progress in subsequent meetings to ensure success by the family. As a GAL, you should always attend MDT meetings on behalf of your client and advocate for your client to attend and be a member of the MDT.

DEALING WITH DISAGREEMENTS *P1-1.04.02*

There will be times when you disagree with the Prosecutor, DFS caseworker, CASA volunteer, or other team member. Case directions are not always black and white; if they were, there would not be so many stakeholders involved. Disagreement is expected and often very positive, so long as it is handled professionally. Complaints from stakeholders often are generated not because you disagreed with them, but because of the way you presented the disagreement, or from lack of appropriate communication (i.e., “head’s up” of the problem), therefore feeling as though your actions were misguided or dishonest. Both of these issues can be handled by speaking to the stakeholder regarding the disagreement in a calm and professional way, prior to a MDT or Court hearing. Give team members a “head’s up” regarding any disagreements before a MDT meeting or Court hearing so the whole team can adequately address the issue if doing so does not harm your client’s interests. Remember you are a legal advocate and there will be times when your client’s interests are best served by not overly sharing.

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Section Two: GAL Program History, Structure, Rules, and Policies *P1-2.00.00*

☐

UNDERSTAND THE GAL PROGRAM HISTORY

Understand the history of both the GAL Program and the history of GALs in Wyoming.

☐

MAINTAIN EXPERT KNOWLEDGE OF THE GAL PROGRAM RULES AND POLICIES

Maintain current and expert knowledge of the GAL Program Rules and Regulations, as well as the GAL Program Policies in order to represent your clients properly and stay in compliance with your contract/employment.

☐

UNDERSTAND GAL PROGRAM PROCEDURES

Understand the GAL Program procedures for cases, payments, and more. Know who to call, why to call, and when to call.

GAL Program History *P1-2.01.00*

BEFORE GAL PROGRAM *P1-2.01.01*

Prior to 2005 (when the Wyoming Legislature created the Wyoming GAL Program), each county was responsible for interviewing, hiring, reimbursing, and supervising any GAL practicing in their county’s Juvenile Court. This duty was left to many different individuals, and varied from county to county. In some counties, the Judge was responsible; while in others, the responsibility belonged to the county clerk.

What is historically obvious was the lack of standardization across the state. The quality of representation a child received in Juvenile Court in Wyoming depended largely upon the county in which the child resided. Similarly, as an attorney GAL, the rate of pay and worthiness of the GAL work as an attorney depended largely on the county in which the attorney practiced. In some counties an attorney was paid over

\$100.00 per hour, but in others, they weren't paid at all. In some instances, a GAL was given a flat rate of \$250.00 for the life of a case, even when it would last many, many years. Some GALs were trained in the specialty of children's law and Juvenile Court; others were not. Some GALs met with their clients; others did not. Some GALs had relatively few clients; others had over 200 clients. The list goes on. In an effort to address the disparities of representation and pay throughout Wyoming, the legislature created the GAL Program, with appropriations of \$4,200,000 per biennium for the representation of child clients in Juvenile Court, and Termination of Parental Rights (TPR) or appellate proceedings arising from these Juvenile Court actions. The Program was placed at the Wyoming Supreme Court, in the judicial branch of government.

[NEED MORE?](#)

Burman, *Justice for Children*, SECTION 2.1.1.

WYOMING SUPREME COURT *P1*-2.01.02

Upon creation of the GAL Program on July 1, 2005, the Wyoming Supreme Court set up a reimbursement program for the Wyoming counties. The Program maintained a list of qualified GALs each county could choose from when appointing a GAL for a Juvenile Court action in that county. If the county used a GAL from the approved list, the county was able to bill the Supreme Court for 75% of the costs of those GAL legal services. The Supreme Court adopted Rule 106 to the District Court Rules, which defined basic standards of practice, qualifications for being placed on the qualified list of GALs, and caseload maximums. At that time, the caseload maximum was 65 cases per part-time attorney.

The GAL Program had many improvements while residing at the Supreme Court and was successful in the areas of standards, caseload maximums, qualifications, pay standardization (\$100.00 per hour), and increased training. However, there were still concerns that needed to be addressed. Counties and judges chose not to bill the Program for the state match so they could continue to appoint GALs who did not meet the qualifications set forth in Rule 106. Furthermore, GALs were not supervised, so there was no way to ensure that GALs were fulfilling the requirements of the job or consistently meeting client expectations. There was not a complaint process for children or other stakeholders to report concerns with the GAL's representation. Additionally, there were still attorneys who were above the caseload maximum, and others who were over-charging for their services. As a result, and at the request of the Supreme Court who was uncomfortable with the appearance of supervising attorneys that appeared before the Court in cases, the Wyoming Legislature moved the GAL Program to the Office of the Public Defender (OPD), effective July 1, 2008.

[NEED MORE?](#)

Burman, *Justice for Children*, Section 2.1.1.

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Current GAL Program Structure *P1*-2.02.00

Among the many changes made by the State Public Defender (SPD) when the OPD took over the administration of the GAL Program, was the hiring of an attorney to run and oversee the Program. This allowed the Program to establish supervision and provide robust case resources and assistance. The OPD adopted rules through the Administrative Procedure Act (APA) rules process to govern the Program and the GALs, and overhauled policies and the reimbursement method so that the Program paid the costs up-front, then billed the counties quarterly for the 25% match.

Beginning July 1, 2008, all GALs who represented children in Juvenile Court had to contract with the OPD instead of the counties in which they practiced. The GAL was paid directly via the GAL Program and the Program billed the counties for the 25% match. This allowed a greater connection between the state dollars and the legal representation, and it also gave the GAL Program a different role with attorney GALs. Other major changes made at this time included changing the caseload standards, increasing the specificity of the representation standards in the rules, and taking over the case appointment process to ensure that qualified and appropriate attorneys were assigned, caseloads were suitable, and that attorneys were appointed in a timely manner.

WYOMING GAL PROGRAM RULES *P1-2.02.01*

The GAL Program Rules and Regulations were adopted in December 2008 (and updated in 2013), and include detailed guidelines regarding your duties and responsibilities. You should read them and be very familiar with the requirements.

WYOMING GAL PROGRAM POLICIES *P1-2.02.02*

The GAL Program has adopted policies to clarify the Rules and Regulations, and to provide as much help and direction as possible to GAL attorneys. All current policies can be found on our website at gal.wyo.gov. You should read these and be very familiar with the requirements. Samples of the policies are described in sections below.

POLICY – CONFLICT OF INTEREST

The policy on conflict of interest governs your ethical conflicts. It defines and discusses access of files, case conflicts, concurrent conflicts, business transactions with clients, conflicts with past clients, conflicts between clients, and firm association conflicts. It also gives direction on how to handle a conflict and a form to request the appointment of a new GAL due to a conflict of interest.

POLICY – FORMAL COMPLAINTS

The policy on formal complaints is posted on the Program website and given to anyone who calls the Program with a complaint regarding your representation of a client. The Program reviews and investigates all formal complaints submitted against you. No formal complaint will be accepted anonymously and all formal complaints must be in writing. You will have an opportunity to respond to all complaints investigated by the Program. Upon receipt of an appropriate complaint, the Administrator will review the complaint and initiate an investigation. The Administrator will review the complaint and your actions to ensure compliance with the Program rules, regulations, and policies. The Administrator will not review individual decisions or recommendations made by you in specific cases. The Administrator will not review orders of placement or custody of a child. The most common formal complaint is that you have not met with your client or observed your client in the client's home.

POLICY – CHILDREN IN COURT

The policy on children in the Court was adopted to further the mission of the attendance of the child in Court. Per Wyoming law, all children in CHINS and Delinquency proceedings must attend Court hearings, and therefore, should attend the MDTs as well. The Program policy takes this a step further and states, “[a]ll children, regardless of age or type of Juvenile Court case, as parties to the Juvenile Court

proceedings (see W.S. § 14-3-402(xiv)), should attend all significant Court hearings in which they are the subject.”⁸

Even those clients that are not of suitable age to understand or meaningfully participate in the proceedings can attend. Such attendance may benefit the parties and team members, but the child is not required to attend abuse/neglect hearings pursuant to Wyoming Rules of Procedure for Juvenile Courts Rule 2A, unless the Court orders the attendance.

POLICY – CLIENT MEETINGS

The GAL Program adopted this policy to guide the frequency and timing of meetings with your clients, as well as your professional relationships with clients. The policy contains many specific instructions, but the following list covers the main highlights.

MAIN REQUIREMENTS FROM POLICY ON CLIENT MEETINGS

In regards to client relationships and meetings, you shall:

- Maintain sufficient contact with the client to establish and maintain an attorney-client relationship;
- Meet with the client, in-person, as soon as you have been assigned, but in no case longer than 30 days from appointment to the case;
- Meet with a client, at his/her home or current placement, within 30 days of any change in placement;
- Meet with the client in the child’s home or current placement, whenever possible, so the GAL can observe interactions with the caregivers;
- Meet again with the child in-person (and not at the Courthouse right before a hearing or MDT) when there is a change to a child’s activities (such as changes in placement, school suspensions, in-patient hospitalizations, major Court hearings, etc.);
- Ensure meetings take into account the child’s age and maturity;
- Inform your client of case proceedings in an age appropriate manner;
- Meet with all clients in a case;
- Balance the cost and needs of the client when traveling out-of-state to meet with a client;
- Avoid conflicts of interest or potential conflicts of interest;
- Maintain professional boundaries with child clients; and
- Know which behaviors are prohibited and which may signal violations of the professional relationship.

[NEED MORE?](#)

Wyoming GAL Program, Rules and Regulations.

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GAL Program Procedures *P1-2.03.00*

WHO TO CALL *P1-2.03.01*

If you have a question on a procedure that is not included in the Rules or Policies, or if you need further clarification on Program matters, feel free to contact the Program staff at any time. All staff members are available by phone and by e-mail with their contact information listed below. Our main office number is (307) 777-7480 and our fax

⁸ WYOMING GAL PROGRAM, POLICY ON CHILDREN IN COURT.

number is (307) 777-5331. The Program Office is located in Cheyenne, Wyoming in the Rogers Building basement at 316 West 22nd Street.

FOR FISCAL AND PAYMENT ISSUES you can contact the Program's Fiscal Specialist at (307) 777-2451. The Fiscal Specialist can answer questions about timing of payments, invoicing and billing, reimbursement and expenditure payments, the payment process, the facilitation of travel, expenditure, and other approvals, and other related fiscal or accounting matters. If the Fiscal Specialist is not available or cannot answer your question, feel free to contact the Program Administrator.

FOR ADMINISTRATIVE AND DATABASE ISSUES contact the Legal Assistant for the Program at (307) 777-7480. The Legal Assistant can assist you with various administrative tasks, as well as client database operations and general case matters. If the Legal Assistant is not available or cannot answer your question, feel free to contact the Program Administrator.

FOR CASELOAD, CONTRACT, AND CASE SPECIFIC ISSUES contact the Program Administrator. The Program Administrator can help you find a resource for a client or case, navigate the state and federal laws, explain caseloads, discuss program contract questions, and answer other related questions. The Program Administrator has access to e-mail even when he or she is out of the office, attending some meetings, or traveling on behalf of the Program. The Program Administrator can also be reached via cell phone at (307) 286-6294.

NEED MORE?

Before GAL Program:

Burman, *Justice for Children*, Section 2.1.1.1.

Wyoming Supreme Court:

Burman, *Justice for Children*, Section 2.1.1.1.

Current GAL Program Structure:

Burman, *Justice for Children*, Section 4.2.2 and 4.2.3.

Wyoming GAL Program Rules:

Burman, *Justice for Children*, Section 4.4.2.

Wyoming GAL Program Rules and Regulations.

Wyoming GAL Program Policies:

GAL Program, Policies on Website, <http://gal.wyo.gov/index.php?page=program-policies>

[Return to Checklist](#)

Section Three: Independent Investigation *P1-3.00.00*

☐

CONDUCT AN INDEPENDENT INVESTIGATION

Ensure you are conducting an independent investigation of the case, on behalf of your client(s). This does not preclude collaboration.

☐

CORRECTLY ASCERTAIN AND DETERMINE YOUR CLIENT'S BEST INTERESTS

Use objective criteria to determine your client's best interests, which should be child and case specific.

**OBTAIN ACCESS TO ALL NECESSARY RECORDS**

Use the legal pleadings and tools at your disposal to gain access to needed records, even if protected by federal laws, such as substance abuse and educational records.

**COMPLETE A GAL REPORT WHEN STRATEGICALLY APPROPRIATE**

When it is in the best interests of your client, complete a GAL report, furnish it to the parties for signature, and, if all signatures have been obtained, file the report with the Court.

As part of your representation of the child client, you must conduct an independent investigation of the case and the child's circumstances. You must determine the child's best interests on your own, or independently, based on what you have learned in the case. This does not mean that the recommendation you have reached does not sometimes align with the recommendation of other team members. Oftentimes, it does. It also does not mean that you cannot, or should not, work with other team members collaboratively on cases.

If you have inherited a case from a previous GAL, part of your independent investigation should be to interview the previous GAL, coordinate with the previous GAL about how to discuss the change in GAL with your client, make sure you have an order substituting counsel, review the file, track down any missing documents, and review previous hearings to ensure the hearings were happening on time and you are on track for the next timely hearing.

MINIMUM REQUIREMENTS FOR INDEPENDENT INVESTIGATION

The Program Rules require you to conduct a full and independent case investigation in a timely manner and shall include, at a minimum:

- Obtaining information about the child and the circumstances that led to the filing of the petition, which shall include obtaining copies of all pleadings and relevant notices;
- Meeting with and observing the child's interaction with their caregivers, which includes meeting with and observing the child at home or in placement, even if a CASA or other child or family advocate is, or has been, involved in the case (although you are free to observe at the home along with the CASA or DFS caseworker);
- Meeting personally with the child in a timely manner, even if a CASA or other child or family advocate is, or has been, involved in the case, unless the child's age and capabilities prevent it.

As stated, in order to determine the best interests of the child, you must know the facts of the case. Chapter 2 Section 3(b)(4) of the GAL Program Rules requires you to conduct a full and independent investigation. The investigation of the facts of the case is where the independence and ethics of the GAL really rises to the fore. As several stakeholders comment in Program surveys, are you simply a pawn of DFS, the Prosecutor, or the family? Are you determining the best interests of the child based on what you are being told by a third party, or are you independently determining what the facts are in the case?

You must conduct an independent investigation into the facts of the case, the treatment issues, treatment needs of the child and the family, and any and all issues that prevent removal of the child or effect reunification of the family.

Do you simply take what the therapists, educators, service providers, foster parents, and others are saying at face value? Or do you independently investigate all of the issues in the case, and reasonably determine what the best interests of the child are? As Burman states, "it is not required that you conduct your own evaluations or be a medical, therapeutic or educational expert, but are you using your knowledge, training, and skills to independently weigh the information

to reasonably determine what you believe is in the best interests of the child?”⁹

[NEED MORE?](#)

Wyoming GAL Program Rules and Regulations, Chapter 2, Section 3(b)(iv).

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Best Interests Determination P1-3.01.00

The GAL Program Rules define best interests as:

“a determination of the most appropriate course of action based on objective considerations of the child’s specific needs and preferences. The determination of the best interests of the child should be based on objective criteria as set forth in the laws that are related to the purposes of the proceedings. The criteria should address the child’s specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment and the use of the least restrictive detrimental alternatives available. This determination must include the presumption that it is in the child’s best interest to be with his or her parent(s), as outlined by the Wyoming Supreme Court in *In re Guardianship of MEO*, 2006 WY 87, 138 P. 3d 1145 (Wyo. 2006).”¹⁰

BEST INTERESTS DETERMINATIONS – LIST 3

“Best interests” are defined in the GAL Program Rules above and, in short, your determination of best interest should:

- Be based on objective considerations;
- Be child specific;
- Follow the state and federal laws;
- Be based on the goal of expeditious resolution of the case;
- Use the least restrictive detrimental alternatives available; and
- Include the presumption that it is in the child’s best interests to be with his or her parent(s).

How does one, with commitment and dedication, determine what is in the “best interests” of the child? That determination and how you arrive at that determination is the sum and substance of the practice of guardian *ad litem* work. Paramount to this work is finding an objective way to arrive at a decision of what is in the child’s best interests, as well as ensuring a depth of conversation with the client about their wishes, and your determinations as a GAL of their best interests.

The Rules specifically governing GAL practice states: “the lawyer shall represent what he or she reasonably believes to be in the best interests of the individual.”¹¹ In his book *Justice for Children*, Burman discusses what the term “reasonably believes” means, stating it is both a subjective and objective matter.¹² What are the facts in this case and what do you know to qualify what you are observing.

The determination of best interests is a summation of the facts of a particular case and your professional and life experiences. This must at all times be tempered by our

⁹ OHN M. BURMAN, *JUSTICE FOR CHILDREN: MANUAL FOR GUARDIANS AD LITEM IN JUVENILE COURT AND TERMINATION OF PARENTAL RIGHTS CASES* 38 (2010).

¹⁰ *IN RE GUARDIANSHIP OF MEO*, 2006 WY 87, 138 P. 3d 1145 (Wyo. 2006)

¹¹ RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW, RULE 1.2E.

¹² JOHN M. BURMAN, *JUSTICE FOR CHILDREN: MANUAL FOR GUARDIANS AD LITEM IN JUVENILE COURT AND TERMINATION OF PARENTAL RIGHTS CASES* 38 (2010).

knowledge that it is in the best interests of every child to be raised by his or her own family.

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GALs Access to Records *PI-3.02.00*

In general, the order appointing you to a case should give you access to any and all records and information regarding the child client. This includes, but is not limited to, school records, medical records, evaluations, and reports. It may be necessary to get a more specific order outlining the types of records you have access to, and occasionally, you may have to obtain an order from the Court authorizing access to specific records. The Health Insurance Portability and Accountability Act (HIPAA) and other federal laws may limit your access to records, absent a more specific order from the Court. Sample Motions and Orders for these described circumstances are included in the GAL Program's Motions Bank.

[*NEED MORE?*](#)

Wyoming GAL Program Motions Bank, available at <http://gal.wyo.gov>.

EXCEPTION — SUBSTANCE ABUSE RECORDS *PI-3.02.01*

Federal law prohibits the disclosure of identifying information or records that diagnose or identify a person as a substance abuser, including the abuse of alcohol. Federal law, in 42 CFR Part 2 only allows the disclosure of this information with consent that conforms to federal regulations. The Juvenile Court cannot order the release of this information without following specific procedures.

PROCESS FOR OBTAINING SUBSTANCE ABUSE RECORDS BY COURT ORDER — LIST 4

- File a motion and request for hearing for the release of substance abuse records. The Code of Federal Regulations requires that the identity of the patient remain confidential; this means you cannot refer to the person by name. Provide copies of the motion and request for hearing to all parties (per the Wyoming Rules of Civil Procedure), as well as the agency that has the records.
- At the hearing, argue your position to the Court, emphasizing why it is necessary that the records be produced.
- At hearing, ask the Court for an order compelling the release of the records for in-camera review.
- If your motion is granted, provide the Subpoena Duces Tecum and Order to the Director of Medical Records of the agency.
- Once the records are produced, the Judge reviews the records in-camera to determine which individuals are authorized to view the records. (This does not mean they are entered into evidence.)
- If you want the records entered as evidence, you must subpoena the professional who created the records because they are required to be present at the hearing. Generally, you will also serve that person with the Subpoena Duces Tecum, requiring that he or she bring the requested records to the hearing. If the records are deemed necessary as evidence, the professional that made the records will need to be served with both a subpoena requiring presence at the hearing, and a Subpoena Duces Tecum to bring the records with him or her to the hearing.
 - At the hearing, you will need to follow the Rules of Evidence to establish the

relevance of the records before the records will be admitted as evidence.

A sample release and pleadings for this legal process are included in the GAL Program's Motions Bank.

[NEED MORE?](#)

42 C.F.R. § 2 (2012).

Wyoming GAL Program Motions Bank, <http://gal.wyo.gov>.

EXCEPTION – EDUCATIONAL RECORDS *P1-3.02.02*

Federal law also prohibits access to educational records. FERPA, the Family Educational Rights and Privacy Act, protects these records unless the parent (not the child welfare agency) consents to the release. This only pertains to records, not to a teacher's sharing of information regarding the student (unless they are sharing information based solely on educational records). There are many exceptions that allow the release of educational records, and four of these exceptions may apply in your cases. If you are unable to obtain consent of the parent, disclosure is authorized to:

- Other school officials, including teachers, with legitimate educational interests in the child;
- Appropriate persons in connection with an emergency when the information is needed to protect the health and safety of the student or other persons;
- Officials of other schools when a student is transferring schools;
- Appropriate persons when the release of information is needed to comply with a judicial order or subpoena. There are protections against re-disclosure that you should remain cognizant of if you gain access to these records.

Educational records are important for your advocacy and knowledge of the client's scholastic needs and future. You should first try to obtain consent to these records from the parent. If they are unwilling or unavailable, decide whether it is you that needs these records, or whether it is the educational facility. If it is the school, one of the first three exceptions listed above will probably apply. If you need the records, motion the Court for access. The GAL Program's Motions Bank includes a motion and order for access to educational records.

[NEED MORE?](#)

20 U.S.C. § 1232g; 34 C.F.R. § 99, as amended (2012).

Wyoming GAL Program Motions Bank, <http://gal.wyo.gov>.

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GAL Reports *P1-3.03.00*

As a GAL, you will be required to make recommendations to the Court and the MDT regarding the best interests of your client. These recommendations are typically done orally, but you should be aware that you can use a written GAL Report as a tool to obtain consensus in a case or inform the parties and Court of the steps you have taken in a case, your recommendations, and the reasoning for your recommendations. Because you cannot testify to what you put into the GAL Report (and

the report is therefore hearsay), the report must be signed and approved by all parties to the case before it is filed with the Court. This requirement comes from case law from the Wyoming Supreme Court and is not optional. If all parties do not sign the report - and the report contains information you have seen, heard, or done - it cannot be filed under any circumstances. This does not include normal attorney motions and pleadings, only GAL Reports that contain information that would make you a witness in the case.

Strategically, a written GAL Report may be helpful even if it is never filed, as it can give the parties an idea of the evidence you have, as well as your thoughts and recommendations, which can influence their decision on a case, trial, etc. The GAL Program's Motions Bank contains a sample GAL Report.

Your report and recommendations, whether made orally in Court or in a written report, must always be based on evidence and should contain the following four pieces of information:

- Investigations you have conducted;
- Any of your concerns;
- Your placement recommendations, including visitation; and
- Your goal(s) for the child, the concurrent plan, and the progress towards that goal.

[NEED MORE?](#)

Wyoming GAL Program Motions Bank, <http://gal.wyo.gov>.
Burman, *Justice for Children*, Section 7.3.

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Section Four: Ethical Obligations and Issues *P1-4.00.00*

GALs in Wyoming: Rules of Professional Conduct *P1-4.01.00*

- | | |
|--------------------------|--|
| <input type="checkbox"/> | OPERATE UNDER A NORMAL ATTORNEY-CLIENT RELATIONSHIP |
| | <i>Understand that there is a presumption of a normal attorney-client relationship between the GAL and child.</i> |
| <input type="checkbox"/> | KNOW THE BOUNDARIES OF CONFIDENTIALITY AND PRIVILEGE WHEN ACTING AS A GAL |
| | <i>Your disclosure of confidential information received from your client is only allowed in certain situations. You should take care to safeguard it and your attorney work product.</i> |
| <input type="checkbox"/> | ACT FIRST AND FOREMOST AS THE CLIENT'S ATTORNEY |
| | <i>A lawyer must act with commitment and dedication to the interests of the client and with zeal in advocating on the client's behalf.</i> |
| <input type="checkbox"/> | ENSURE YOU ARE A COMPETENT GAL |
| | <i>Being competent is your ethical obligation as a GAL. Knowing the laws, regulations, stages of child development, available services, motions practice, and the case ensures you act ethically in your representation.</i> |
| <input type="checkbox"/> | BEWARE OF CONFLICTS OF INTEREST |
| | <i>Conflicts of interest may arise in your representation of children in Juvenile Court, especially in the representation of siblings. Acceptance of a waiver from your client for this conflict of interest is problematic.</i> |
| <input type="checkbox"/> | ENSURE YOUR COMMUNICATIONS WITH REPRESENTED PARTIES IS APPROPRIATE |
| | <i>Be aware of the legal and ethical rules surrounding your communications with represented parties, such as parents or DFS.</i> |

GAL AS ATTORNEY - PRESUMPTION OF NORMAL ATTORNEY CLIENT RELATIONSHIP *P1-4.01.01*

The presumption in any GAL case is a normal attorney-client relationship. By the very nature of having a GAL appointed for a client, the child becomes a client with diminished capacity under the Rules of Professional Conduct

Rule 1.14. That said, you should make every effort to maintain a normal attorney-client relationship, when at all possible. This ensures that the client trusts you, and also protects you as the attorney.

[NEED MORE?](#)

Burman, *Justice for Children*, Section 3.

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KNOW THE BOUNDARIES OF CONFIDENTIALITY AND PRIVILEGE *P1-4.01.02*

In some situations, this means not sharing confidential information that is attorney-client privileged. If it is a safety concern or in the child's best interest that the privileged information be shared with the DFS worker or team, you should make an attempt to get permission from the client to share the information, or try to get the information from another source, instead of revealing the confidential information your client has shared with you. Everything your client shares with you when you are meeting one-on-one should be considered confidential and privileged information from your client first. Then, if it needs to be shared, you can explore the normal exceptions to the confidentiality rules. Treat your child client as you would any other adult client you work with.

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ACT FIRST AND FOREMOST AS THE CLIENT'S ATTORNEY *P1-4.01.03*

As you practice law each day, you should keep in mind that first and foremost you are the client's attorney. The Rules of Professional Conduct require that. "A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."¹³ Most fundamental to this is the understanding that it is in the best interests of every child to remain in his home if possible, and if the child must be removed, to return home as soon as possible. Only if a child is unable to return home should the GAL look to permanency outside of his home. With that being the basic premise of the best interests of a child, what are your ethical obligations?

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Knowledge of the Laws and Regulations = Competency *P1-4.02.00*

In order for you to determine the best interests of your client and act thereon, it is paramount that you have a detailed and thorough understanding of state and federal statutes regarding Juvenile Court. You should take every opportunity to review Title 14 of the Wyoming Statutes. Much the same as taking a good book to read on trips, Title 14 should be read and reread constantly. It is in the best interest of every child for the Juvenile Court process to operate pursuant to state statute and to progress according to the timelines required.

Every GAL who is acting in the best interests of his client will, with commitment and dedication, zealously advocate that the Juvenile Court process operate pursuant to state statutes and undertake motion practice to insist that it does.

¹³ RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW.

KNOWLEDGE OF CHILD DEVELOPMENT AND SERVICES AVAILABLE TO CHILDREN AND THEIR FAMILIES

P1-4.02.01

Burman states that while “a GAL must be ‘competent’ this does not mean you need to become an expert relating to child development.”¹⁴ You need to be familiar with your community partners, services available, and needs of the child to the degree you are able to ask the right questions of the right people, and insist that the services be provided.

How do you accomplish this seemingly insurmountable task? It is surprisingly easy! Many high-quality trainings, conferences, and materials are made available to Wyoming GALs each year. If you make the effort to take advantage of these training and informational opportunities, you will have the knowledge you need to “competently” represent your client.

MOTION PRACTICE *P1-4.02.02*

You should be familiar with motions practice in your local Juvenile Courts to zealously move cases through the Court system. Knowledge of the law and child development is of no avail if you simply sit back and wait for others to act. As stated above, “it is the duty of every GAL to act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf . . . [in] what he or she reasonably believes to be in the best interests of the individual.”

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Conflicts of Interest *P1-4.03.00*

There are a few situations during GAL representation where a conflict of interest can arise, including representation of siblings. Conflicts of interest are again governed by the Rules of Professional Conduct and also by the Program Policy on Conflicts of Interest.

Representing siblings is not automatically a conflict, but you must be aware that one can arise at the beginning, the middle, or at the end of a case. It must be watched, and if a conflict does arise, you need to ask the Judge to appoint an additional GAL to represent the other sibling(s). You must also ensure you do not have any confidential information from the sibling you will no longer be representing that may harm that client, and if so, you should remove yourself completely from the case. A situation that may result in a conflict between siblings is if they have a difference of opinion that would affect the outcome for each other.

In general, as an attorney, you know that a client can waive a conflict of interest. That said, whether or not the child, as a diminished capacity client, can make an informed decision about the conflict, in order to waive it, is troublesome. You should make every effort to avoid this situation, as it is unlikely that a child would truly understand the dilemma and the legal consequences of the waiver. Avoiding this protects you as the attorney.

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¹⁴ JOHN M. BURMAN, JUSTICE FOR CHILDREN: MANUAL FOR GUARDIANS AD LITEM IN JUVENILE COURT AND TERMINATION OF PARENTAL RIGHTS CASES 43 (2010).

Dealing and Speaking with Represented Parties *P1-4.04.00*

The most important thing to remember when dealing and talking to other parties in the case is to ensure that, if they are represented by an attorney, you get permission from their attorney to speak to them or have their attorney present. This is especially important with the parents on the case. If the parents are represented by an attorney, be sure you get approval from their attorney before you talk to them about the case. Further, the child is represented by you – counsel – and therefore, opposing counsel should not talk to the child without first obtaining your permission.

[NEED MORE?](#)

Rules of Professional Conduct for Attorneys at Law Rules 1.3(1).

Burman, *Justice for Children*, Section 3.

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapters 18 and 29.

Conflict of Interest Policy, GAL Program Policies.

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Section Five: Communicating and Interviewing Your Client

P1-5.00.00

☐

BUILDING RAPPORT

Meet with your client personally in a setting that is comfortable for the client, with considerations of their age and placement situation.

☐

EXPLAIN YOUR ROLE, THEN QUESTION AND INTERVIEW YOUR CLIENT

At the first meeting, explain your role as a GAL to the client, in age appropriate language, and ensure that they know what information will be kept confidential and what won't, such as mandatory reporting of abuse and neglect. Be aware of the types of questions and interviewing styles you can use.

☐

WATCH YOUR BOUNDARIES AND RELATIONSHIPS WITH CLIENTS

Beware of potential relationship boundary issues with clients and follow all laws and rules.

Building Rapport *P1-5.01.00*

Developing a rapport with your client is one of the most important steps for a GAL. You must develop a relationship with the child based on trust and honesty. Oftentimes, children have no idea what is going on, and they are in crisis mode. In the first few days of a case opening, the child has met many new people, and may have a difficult time understanding each person's role. The age or development of your client are the most important factor when developing rapport with them and will drive the relationship moving forward.

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MEET WITH YOUR CLIENT *P1-5.01.01*

When you first meet your client, it is typically in a setting foreign to them. Remember that they have recently endured a crisis-type situation and can be very uncomfortable with meeting many new people. It is your job to assess the comfort level of the child, which is often age-dependent, in order to

gauge what the first meeting should look like. It is very common for the first meeting to be brief, informal, and to occur in the child's placement. The child may wish to have his or her foster parent or relative sit in on this meeting. As you begin to get to know the client, the next meeting may be in your office or outside of the placement, and you can begin to meet with them alone. You should introduce yourself to the child and tell them that you are their guardian *ad litem*. Depending on the age of the child, you can go into more or less detail about your role. If the child is non-verbal, it is your job to observe the child in the placement, assess any developmental delays or behavior problems, and generally be around the child to assess and investigate the case.

EXPLAIN YOUR ROLE TO YOUR CLIENT *PI-5.01.02*

As indicated above, explaining your role to your client depends largely on the age of the client. With a very young client, you may not be able to explain your role. With older clients, however, you must tell them what it is that you do. It is your job as the GAL to explain, in age-appropriate language, what type of GAL you are in the case, and what you are responsible for doing. Ensure that you explain to the child what information will be kept confidential and what won't, such as information about current abuse and neglect. You must explain to your client that although you and the child share a certain level of confidentiality (attorney-client privilege and confidentiality), there may be things that you as the GAL will need to share with the MDT team or Court, if you believe it is in the child's best interest to do so. You should explain to the child that you will avoid sharing information you have obtained from the child, but in the event that you must share the information, you will consult with them prior to doing so. If you can obtain the same information from a collateral source, you should make every effort to do so to preserve the confidentiality and trust between you and the child.

Also, talk about what happens if you and your client do not agree on what should happen to them. If you and your client agree as to what is in your client's best interests, this is what you will tell the Court on behalf of the child. If you and your client disagree as to what is in his or her best interests, you must inform the Court of your determination of the client's best interests AND what your client believes to be in his or her best interests. It is very important that your client understands that they have a voice, but that you as their GAL may also make a recommendation that is contrary to what they want. This helps to establish trust.

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Questioning and Interviewing *PI-5.02.00*

TYPES OF QUESTIONING FOR OPEN COMMUNICATION *PI-5.02.01*

When meeting with your client, your initial assessment should be whether he or she is safe. Typically, if the child has been removed from the home, they are either in the care of a relative or foster care. Thus, the child is no longer in danger. However, it is important that the child feel that he or she is safe. The type of questions you will ask your client is also very dependent on their age. It is inappropriate to ask a very young child where he wants to live while he is removed from his caregiver(s). However, an older client may have an opinion on this issue that you should know about. Thus, if the client is of an appropriate age, you can ask the child if they wish to remain in his current placement, or if there is

another placement in which he might feel more comfortable. It is important for these children to have some semblance of a normal life, and oftentimes, where they are placed is the first step to this.

INTERVIEWING FOR FACTS *P1-5.02.02*

As you get to know your client and you begin your investigation into the actual abuse/neglect incident that brought the child into care, as well as what their life was like before and during the incident, your questions can become more detailed and personal. Hopefully, as you have built a relationship with your client, he will be more comfortable and trusting of you so that he gives you the best answers. Always attempt to ask open-ended questions, and avoid any suggestiveness when speaking with the child. You can often rely heavily on therapists or another reliable adult with whom the child has shared information to fill in the blanks of your investigation. It is crucial that the GAL conduct his or her own independent investigation, aside from information gleaned from the child, such as from school personnel or records, family, friends, neighbors, medical personnel or records, church members, etc. Note, be careful, it is important that you attempt to maintain as much confidentiality surrounding your client and the case as possible, so approach these people with caution and care, and do not share information about the Juvenile Court case with non-parties.

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Boundaries and Relationships With Clients *P1-5.03.00*

RELATIONSHIP BOUNDARIES WITH CLIENTS *P1-5.03.01*

Being a GAL is a very difficult, yet extremely rewarding job. The children you will come into contact with can easily become very personal to you. It is your job, as their GAL, to represent to the Court and the parties involved in the case, what is in their best interest and to do whatever is necessary, legally, to progress towards this goal. It is not your job, as the GAL, to become the child's parent, therapist, teacher, or friend; the child already has people in his or her life that fulfill these roles, and it is much more important for him or her to build these natural supports and not rely on you. Defining the role of a GAL is often easier said than done, so it is extremely important that you define your role both verbally and with your actions from the very beginning. If a client comes to you with a question or issue that goes beyond your role as his or her attorney, you should refer them to the appropriate person (oftentimes a DFS worker, or perhaps a therapist) who can assist them. A GAL should not offer gifts, services, or advice outside of your level of expertise. This can be very difficult, especially when you have developed a close relationship with the child. Most often, the best help you can give them is connecting them with someone or something that can provide the necessary help or advice. Please refer to the GAL Program policy on client relationships for some examples of things you should not do as a GAL, and actions that can be a red flag for problems.

NEED MORE?

Burman, *Justice for Children*, Section 6.

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Section Six: Federal Laws That Govern Your Work *P1-6.00.00*



KNOW THE FEDERAL LAWS THAT IMPACT YOUR WORK AS A GAL

The Juvenile Court legal area has numerous federal laws that need to be understood and followed, including statutory law, case law, and interstate law and compacts.

You are asked to be an expert in an ever-evolving area of law that covers a large portion of state and federal law. GALs must be experts in Title 14 of the Wyoming State Statutes and knowledgeable in the areas of family law, adoption, guardianship, Termination of Parental Rights, child support, criminal law, etc. GALs must also be experts on over twenty different federal laws and have a working knowledge of many more federal laws, including, but not limited to, the Adoption and Safe Families Act (ASFA), Indian Child Welfare Act (ICWA), Fostering Connections, Child Abuse and Prevention Treatment Act (CAPTA). So many acronyms! This section will review the important federal laws and what the laws will mean to your GAL practice.

Child Protection Laws *P1.6.01.00*

CHILD ABUSE PREVENTION AND TREATMENT ACT (1974) *P1-6.01.01*

The Child Abuse Prevention and Treatment Act (CAPTA) provides states a mechanism to access federal funding to assist in responding to cases of child maltreatment. CAPTA includes numerous requirements that a state must meet to receive federal funds including a system of mandated reporting for suspected child abuse/neglect, assessments to determine which reports of suspected child abuse/neglect are valid, and responses that are appropriate based on the level of risk to the child. Of particular importance is CAPTA's requirement that a GAL be appointed to represent a child when judicial intervention is necessary. Although CAPTA does not require that the GAL be an attorney, it does require that the GAL receive training in the role of a GAL. The role of the GAL is to "obtain first-hand, a clear understanding of the situation and the needs of the child" and "make recommendations to the Court concerning the best interest of the child". CAPTA also establishes requirements for DFS worker training and disclosure of information to government entities, requires mandatory child abuse reporting, and provides minimum standards for defining physical child abuse, neglect, and sexual abuse. Wyoming's statutory definitions of child abuse/neglect conform to these minimum standards.

ADOPTION ASSISTANCE AND CHILD WELFARE ACT (AACWA) OF 1980: ESTABLISHING TITLES IV-B AND IV-E OF THE

SOCIAL SECURITY ACT *P1-6.01.02*

The AACWA has two primary goals:

- Reduce the number of children entering the foster care system; and
- Reduce the length of time children remain in the foster care system.

To accomplish these goals, the AACWA amended Titles IV-B and established Title IV-E of the Social Security Act. In order for a state to be eligible for funding under Titles IV-B and IV-E, the state must comply with the requirements set forth therein.

Title IV-B requires a state to develop a plan to prevent and respond to child abuse/neglect cases in order to receive federal funding. Title IV-E provides federal funding to assist in offsetting the costs of foster care when children are removed from their homes. These Titles also provide federal adoption subsidies for special needs children (specifically, older children and children with emotional or behavioral problems).

In broad terms, Title IV-B and IV-E require the following:

- Reasonable efforts be provided to prevent removal of a child from their home.
- Reasonable efforts be provided to reunify children with their families.
- Permanency planning for each child, specifically including, six-month review hearings to monitor progress on the case, and a detailing of the services to be provided to facilitate the permanency plan for the child.

Titles IV-B and IV-E are particularly relevant to your practice as a GAL. These Titles drive much of what DFS does in a case, and failure to follow the mandates can have significant consequences for DFS and the child should funding be lost.

In order to receive IV-E funding, specific requirements must be met by the Juvenile Court system. Those requirements include:

REQUIREMENT	TIMELINE
The Court must find that it is contrary to the welfare of the child to remain in, or return to, the child's home.	Finding must be made in the first Court order following the removal of the child from the home.
Case Plan	Must be developed within 60 days of the date the child was removed from the home.
Reasonable Efforts to Prevent Removal	Must be made within 60 days of the date the child was removed from the home.
Six-Month Periodic Review	Every six months after the child enters foster care (Wyoming Statutes require these hearings every six months from the date of the actual removal. W.S. 14-3-431).
Reasonable Efforts to Finalize Permanency Plan	Every 12 months after the child enters foster care (Wyoming Statutes require these hearings every six months from the date of the actual removal. W.S. 14-3-431).
Mandatory Filing of a Petition to Terminate Parental Rights	Child in foster care for 15 of the last 22 months

ADOPTION AND SAFE FAMILIES ACT (1997) *P1*-6.01.03

The Adoption and Safe Families Act (ASFA) is an extensive federal law that provides specific requirements for states when developing child welfare law practices. Wyoming law has adopted these provisions, and the provisions dictate how each of your child welfare cases progress. A comprehensive understanding of ASFA (as embodied in Wyoming law) is essential to advocate as a GAL, as ASFA's provisions lay the groundwork

for what you do every day. This section provides a general overview of ASFA's provisions. Please review Wyoming statutes to gain a complete understanding of how these provisions have been codified in Wyoming.

ASFA amended Title IV-E and IV-B of the Social Security Act. ASFA continued to provide funding to support family preservation and reunification through the provision of reasonable efforts. However, ASFA made clear that "in determining reasonable efforts to be made with respect to a child . . . the child's health and safety shall be the paramount concern."

REASONABLE EFFORTS

ASFA requires that, in most circumstances, reasonable efforts must be provided to facilitate family reunification. Although "reasonable efforts" is not defined, ASFA requires that the state agency establish a written case plan that details the child's placement, school, medical, and other information, and the services that will be provided to assist in reunification or, if reunification is not the goal, the services that will be provided to reach the alternate permanency goal. ASFA continued the requirement for six-month review hearings, and added that a permanency hearing must be held at least once every 12 months while a child is in foster care.

"15 OF 22" RULE

ASFA also established the oft-quoted "15 of 22" rule, requiring a state agency to seek Termination of Parental Rights when a child has been in foster care for 15 of the most recent 22 months, unless one of the enumerated exceptions applies. The purpose of this rule is to ensure children do not "linger" in the foster care system without progress toward permanency. This rule is extremely important for GALs to understand as it is a legal tool to reach permanency for our clients when their parents delay progress or are simply incapable of meeting the requirements of their case plans. For Wyoming's 15 of 22 rule, see Wyoming Statute Section 14-3-431(m).

NO REASONABLE EFFORTS

ASFA also clarified that reasonable efforts toward reunification may not be required in cases in which the harm done to the child is significant and, in some situations, even mandates that the state proceed immediately to a Termination of Parental Rights. ASFA's specific circumstances in which reasonable efforts toward reunification need not be provided are mirrored in W.S. 14-2-309(c).

PERMANENCY

ASFAs focus on permanency for children is also evident in its expansion of alternate permanency options to include permanent guardianships and "another planned permanent living arrangement" (APPLA), and its increased adoption subsidies and incentives.

MULTI-ETHNIC PLACEMENT ACT AND THE INTERETHNIC ADOPTION PROVISIONS (1994) *PI-6.01.04*

The Multi-Ethnic Placement Act and the Interethnic Adoption Provisions (MEPA-IEP) seeks to eliminate the consideration of race, color, or national origin when licensing foster parents and when making decisions for foster care or adoptive placements. The MEPA-IEP also requires that DFS make diligent efforts to recruit foster and adoptive parents "that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed". The MEPA-IEP prohibits delay in placement in order to place in a racially congruent home, and prohibits the use of race, color, or national origin to deny eligibility for foster care or adoption or to become a foster or adoptive parent.

Race, color, or national origin can be considered in very restricted circumstances, such as when an older child wishes to be placed with a

family of a particular race, or has a special need to be placed with a particular race. MEPA-IEP does not apply to any child who qualifies as an Indian Child under ICWA.

Older Foster Youth *P1-6.02.00*

THE FOSTER CARE INDEPENDENCE ACT (CHAFEE ACT) (1999) *P1-6.02.01*

The Foster Care Independence Act, known as the Chafee Act, was established to assist children remaining in foster care until the age of 18 (or 21) to transition into independence. The Chafee Act authorizes the provision of independent living services including educational services (vocational training, assistance in obtaining a diploma or post-secondary education), employment services (job placement assistance), self-care services (financial assistance, housing assistance, counseling), and Medicaid eligibility (the Act authorizes states to extend Medicaid eligibility to former foster youth to age 21). The Chafee Act mandates that a portion of federal funding be used to assist former foster youth to the age of 21.

The Chafee Educational and Training Vouchers was added to the Chafee Act in 2000 to provide federal funds (up to \$5,000 per year per youth) for former foster youth to help pay for post-secondary education or vocational education.

FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT (FOSTERING CONNECTIONS ACT) (2008)

P1-6.02.02

The Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act) allows states to continue to provide foster care services to youth up to the age of 21, as long as those youth are participating in one of the following:

- Completing a secondary education program or program leading to an equivalent credential
- Enrolled in an institution which provides post-secondary or vocational education
- Participating in a program or activity designed to promote, or remove barriers to, employment
- Employed for at least 80 hours per month
- Incapable of doing any of the above activities due to a medical condition, which is supported by regularly updated information in the case plan of the child

Children over the age of 18 may also continue to be eligible for foster care payments if they are living independently, but in a supervised setting. Finally, the Fostering Connections Act also provides funding for relatives who take guardianship of children in foster care. This law also requires clients to stay in their home school if at all possible.

CHILD AND FAMILY SERVICES IMPROVEMENT ACT OF 2006 *P1-6.02.03*

The Child and Family Services Improvement Act of 2006 requires that the Court consider the wishes of older and transitioning youth when making permanency decisions or developing transition plans. The Court must consult with the youth about these decisions in an age-appropriate manner.

This Act is particularly important for you, as you must ensure that the youth are available to participate in the Court proceedings and are well prepared.

Education *P1-6.03.00*

INDIVIDUALS WITH DISABILITIES EDUCATION (IDEA) ACT *P1-6.03.00*

The Individuals with Disabilities Education Act (IDEA) is relevant to your work as a GAL because many of the children you represent may have a disability that impairs their ability to benefit from a free and appropriate education. This includes being able to attend school, get from classroom to classroom, use technology, and more. The IDEA requires an evaluation if a child is suspected of having a disability to determine whether the child has a disability that requires special services for the child to learn effectively. If special services are necessary, a team is developed to draft a written Individualized Education Plan (IEP) detailing the child's academic and functioning levels, the services necessary, the child's goals, etc.

Your client will need a parent or guardian to advocate for the child's needs during the IEP process. The school district must appoint a parent or guardian in every case where the child is in the custody of the state. This person may be, but need not be, the child's foster parent or DFS worker. The biological parent and the guardian can both consent to the evaluation or for services to be provided.

The IDEA sets forth specific restrictions on the IEP process, including provisions for dispute resolution and enforcement, and complaint procedures.

Delinquency *P1-6.04.00*

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT (JJDP) (1974) *P1-6.04.01*

The Juvenile Justice and Delinquency Prevention Act (JJDP) provides federal funding to states that comply with its requirements regarding children in delinquency proceedings. The JJDP has four primary requirements:

- **Deinstitutionalization of Status Offenders.** States are prohibited from holding children who engage in status offenses (i.e. truancy, runaway, curfew violations, etc.) in secure facilities unless the Court issues a detention order;
- **Jail Removal.** Children cannot be held in adult secure facilities unless a limited exception applies or the child is being tried in an adult criminal Court;
- **Sight and Sound Separation.** If a child is detained in an adult secure facility, he or she must be separated by sight and sound from the adult detainees, unless the child is being tried in an adult criminal Court; and
 - **Disproportionate Minority Contact.** States must address any disproportionate representation of children of color in their juvenile justice system.

Relevant Case Law *P1-6.05.00*

IN RE GAULT *PI-6.05.01*

In re Gault concluded that the due process clause of the Fourteenth Amendment to the United States Constitution applies to children involved in delinquency proceedings. In such proceedings, children have the right to notice of the charges, confrontation, cross-examination, counsel, and the prohibition against self-incrimination. This ruling does not apply to children in abuse/neglect and dependency proceedings.

KENT V. UNITED STATES *PI-6.05.02*

In *Kent v. United States*, a Juvenile Court transferred jurisdiction of a 16-year-old child's criminal trial to an adult District Court without first holding a hearing or allowing the child's attorney access to the child's social services file. The United States Supreme Court held that the child was entitled to due process before a transfer of jurisdiction could occur. Due process required at least a hearing and counsel's access to the child's social services file.

SANTOSKY V. KRAMER *PI-6.05.03*

Santosky v. Kramer held the burden of proof on the state in a Termination of Parental Rights case is clear and convincing evidence. This ruling is based on the finding that parents have a fundamental liberty interest in the care, custody, and management of their children. Thus, under the due process clause of the Fourteenth Amendment to the United States Constitution, in an action in which the state seeks to terminate parental rights, the state must prove its case by clear and convincing evidence.

TROXEL V. GRANVILLE *PI-6.05.04*

In *Troxel v. Granville*, the State of Washington's statute provided that any person could petition the Court for visitation rights, and that the Court could grant such rights if was in the best interest of the child. In this case, the mother allowed the grandparents one day of visitation with their grandchildren per month. The grandparents petitioned for additional visitations, which the Court granted over the mother's objection. The Supreme Court held that the statute violated the mother's due process liberty interest in the care, custody, and control of her children. Parents have a constitutional liberty interest in the care, custody, and control of their children. It is presumed that a "fit" parent makes decisions that are in the best interest of their children. In determining what is in a child's best interest, the Court must at least consider the decisions made by a "fit" parent.

Interstate Issues *PI-6.06.00*UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA) AND PARENTALKIDNAPPING PREVENTION ACT (PKPA) *PI-6.06.01*

The purpose of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is to avoid jurisdictional competition and conflict between Courts of different states in child custody matters. A "child custody

proceeding” is a legal proceeding where legal or physical custody is at issue, or where visitation with a child is at issue, such as the following:

- Divorce;
- Separation;
- Neglect, abuse, dependency;
- Guardianship;
- Paternity;
- Termination of Parental Rights; or
- Protection from domestic violence.¹⁵

The purpose of the Parental Kidnapping Prevention Act (PKPA) is to determine which custody decrees are entitled to full faith and credit.

UCCJEA	PKPA
Primarily determines which state shall proceed and which shall abstain	Primarily determines which custody decrees are entitled to full faith and credit
Treats emergencies separately	Treats emergencies as the third tier
Contains provisions on enforcement of out-of-state custody orders	
Applies internationally	Does not apply internationally

Interstate considerations to look at under the UCCJEA:

- Priority jurisdiction to home state;
- Significant connections jurisdiction;
- Forum non conveniens;
- Vacuum jurisdiction;
- Exclusive continuing jurisdiction to modify;
- Provisions for out-of-state evidence;
- Emergency temporary orders jurisdiction.

Be sure you know that the rules that govern Courts’ jurisdiction to make an initial custody determination differ from those governing jurisdiction to modify an existing order. Here is a list of practice points for cases where the UCCJEA is involved:

- Review file and interview client and family carefully to see if child has lived in another state.
- The first question is whether any other state has grounds to hear a case.
- If so, the Court may not make a custody decision.
- If they moved from another state, look for Court orders regarding custody.
- Is there continuing, exclusive jurisdiction to modify in another state?
- Look at significant connection jurisdiction.
- Is another order entitled to enforcement?
 - Should you ask another state to decline jurisdiction?
 - If no other state has jurisdiction, then a Court must determine if it has the power to make the custody decision.
 - If another state has jurisdiction, file a Motion to Dismiss for Lack of Subject Matter Jurisdiction Under UCCJEA.

¹⁵ WYOMING STAT. ANN. § 20-5-202(A)(iv).

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC) *PI-6.06.02*

The Interstate Compact on the Placement of Children (ICPC) establishes uniform legal and administrative procedures governing the interstate placement of foster children. Before a child in the custody of the state can be placed in a home in another state (whether a foster home, relative's home, child care institution or pre-adoptive placement), ICPC requires the sending state to notify the receiving state of the intention to place the child in a home in the receiving state. The receiving state must then provide notice to the sending state that the proposed placement does not appear to be contrary to the interests of the child.

In practice, the ICPC process includes a home study of the potential home and approval by the receiving state. This process is cumbersome, and can take many months, sometimes years. If you have potential placements with relatives, noncustodial parents, or other families in another state, you should encourage DFS to begin the ICPC process as soon as possible and receive back from that state notice that the proposed placement does not appear to be contrary to the interests of the child. Anytime you are considering placing a child in a state other than Wyoming, be sure you are following the requirements of ICPC, as any placement of a child in another state that does not follow ICPC is not a legal placement. This includes ensuring that DFS sends notice, requests a home study or information about the placement, and the home study or information is returned to Wyoming before placement. This is done through the state ICPC Administrators; every state has one.

Need More?

CAPTA:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 10.
Burman, *Justice for Children*, Section 4.6.1.2.

AACWA:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 10.

ASFA:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 10.
Burman, *Justice for Children*, Section 4.6.1.1.

Chafee Act:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 23.
Burman, *Justice for Children*, Section 4.6.1.3.

Fostering Connections:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 23.
Burman, *Justice for Children*, Section 4.6.1.5.

ICWA:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 12.
Bureau of Indian Affairs (BIA) Guidelines

JJDPA:

Campaign for Youth Justice, *What is the JJDPA?*, available at <http://www.campaignforyouthjustice.org/documents/WhatistheJJDPA.pdf>.
Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapters 10, 11, 17, and 12.

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Section Seven: Rules That Govern Your Work *P1-7.00.00*



KNOW AND UNDERSTAND THE COURT RULES

Each case in Juvenile Court has one or more applicable Court rules that you must know and understand. The Rules of Procedure for Juvenile Court are most important, as they affect all of your cases in Juvenile Court, and deal with things such as discovery and timelines.

Rules of Procedure for Juvenile Courts *P1-7.01.00*

These rules govern the practice and procedure in the trial Courts in all Juvenile Court actions¹⁶ -- abuse and neglect, delinquency, and CHINS. The rules were adopted in 2007 and incorporate current amendments.

There are ten Rules of Procedure specific to juvenile proceedings.

Rule 1 outlines the title, scope, and definitions of the Rules as well as acquaints that the Wyoming Rules of Evidence apply to juvenile proceedings.

Rule 2 governs the presence of the child in Court, the presence and limits of the foster parent or other out-of-home placement, the exclusion of the general public, and notice to foster parents, pre-adoptive parents, or relative caregivers that they may have the opportunity to be heard.

Rule 3 dictates discovery and compliance by the State, outlines matters not subject to discovery, prescribes discovery by other parties, delineates the procedure and timelines under which discovery must be furnished, dictates the continuing duty to disclose, speaks to protective orders to restrict discovery, allows that other orders may be entered which aid discovery, and requires timely disclosure.

Rule 4 establishes the five (5) business days prior to hearing time in which any report offered for consideration must be filed and served upon the parties.

Rule 5 establishes the right to counsel for respondents in juvenile actions (including in proceedings subject to the Indian Child Welfare Act and subject to Tribal Court jurisdiction), whether they are a juvenile, guardian, or parent. The rule further governs notice and advisement of the right to counsel. In abuse and neglect cases, this right to counsel applies to the parents, but in CHINS and Delinquency proceedings it applies to the child.

Rule 6 gives authority to the Courts to define procedures for conducting pretrial conferences.

Rule 7 allows that the parties may stipulate to any matter. It requires the Court to accept stipulations to adjudication and disposition only if it determines the parties understand their rights and had sufficient opportunity to consult with counsel. Lastly, specific rules for stipulations in Native American child cases are outlined.

Rule 8 provides the general requirements, qualifications of, appointment, and duties of a CASA. They must be trained in accordance with National CASA Standards and appointed by the Court. They can only serve in abuse and neglect proceedings.

Rule 9 allows for agreements or plea-bargains whereby the parties agree that information gleaned by the state from a parent or respondent juvenile during the multi-

¹³ JOHN M. BURMAN, JUSTICE FOR CHILDREN: MANUAL FOR GUARDIANS AD LITEM IN JUVENILE COURT AND TERMINATION OF PARENTAL RIGHTS CASES SECTION 2.2 (2010).

disciplinary or case-planning process will not be admissible in subsequent criminal proceeding arising from the same episode. Additionally, the rule allows that a juvenile's admissions or incriminating statement to a professional in the course of treatment will not be admitted into evidence in any criminal or delinquency case without the juvenile's permission, excepting statements regarding future conduct.

Rule 10 prohibits juvenile proceedings to be delayed pending criminal proceedings in District or Circuit Court and requires that all juvenile cases proceed pursuant to statutory timelines set forth in the various articles of Title 14 of the Wyoming Statutes.

Be careful about requesting continuances, you don't want to be the reason a case is delayed, so do not ask for one unless it is necessary and justified. Also, object to any continuances that are not in your clients' best interests that another party to the case requests.

Additional Court Rules *P*7-7.02.00

While the Wyoming Rules of Evidence apply to juvenile proceedings,¹⁷ there are some specific exceptions as to what evidence may be received and considered by the Court in abuse/neglect proceedings:

- In shelter care or dispositional hearings, all material and relevant evidence helpful in determining questions may be received by the Court and relied upon for probative value. The parties or their counsel have the opportunity to examine and challenge written reports received as evidence and cross-examine persons making reports.
- Adjudicatory hearings require that only competent, relevant and material evidence shall be admissible to determine the truth of the allegations. The Wyoming Rules of Civil Procedure apply to juvenile proceedings.
- The Wyoming Rules of Criminal Procedure apply to CHINS and delinquency proceedings when consistent with the Juvenile Court Act.

NEED MORE?

Burman, *Justice for Children*, Section 2.2.
 Wyoming Rules of Procedure for Juvenile Court Rule 1(b).
 WYOMING STAT. ANN. § 14-3-409(E), § 14-3-426(d).
 WYOMING STAT. ANN. § 14-3-426(b).
 Wyoming Rules of Procedure for Juvenile Court Rule 1(d).
 Wyoming Stat. Ann. § 14-3-426(b).
 Wyoming Stat. Ann. § 14-3-426(b).
 Wyoming Rules of Civil Procedure Rule 1.
 Wyoming Rules of Criminal Procedure, Rule 1(a), Rule 54(b).

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¹⁷ WYOMING RULES OF PROCEDURE FOR JUVENILE COURT RULE 1(d).

Part Two: Types of Proceedings

Within Part Two of the Handbook, you will find that some of the footnotes, such as specific laws, are included with the body of the handbook, rather than in the **Need More? footnotes** sections. This will assist you in getting straight to the correct statute if you need more information on the specific topics without having to dig through the statute books. Also, remember that you only need to read the applicable proceeding section in Part Two.

Section One: Abuse/Neglect Proceeding *P2*-1.00.00

	REVIEW THE APPOINTMENT ORDER
	CLEARLY UNDERSTAND YOUR ROLE
	MEET YOUR CLIENT
	GET APPROVAL FROM REPRESENTED PARTIES TO MEET WITH THEIR CLIENTS (I.E. THE PARENTS)
	MEET THE FAMILY AND ENSURE DILIGENT SEARCH FOR NON-CUSTODIAL PARENT AND FAMILY IS BEING CONDUCTED BY DFS
	REVIEW AND REQUEST DISCOVERY
	REVIEW THE CASE FILE AND RECORDS
	LOOK FOR ICWA OR DOMESTIC VIOLENCE IMPLICATIONS
	TALK TO THE DFS WORKER
	REQUEST A JURY, IF NEEDED
	INDEPENDENTLY INVESTIGATE THE CASE (MAY INCLUDE TALKING TO PROVIDERS, REVIEWING RECORDS, OBSERVING VISITATIONS, ETC.)
	CONTINUE TO MEET WITH YOUR CLIENT (REGARDLESS OF AGE OR PLACEMENT LOCATION)
	MEET WITH THE FOSTER FAMILY, IF APPLICABLE
	CONDUCT HOME VISIT(S)
	DEVELOP A THEORY OF THE CASE
	DETERMINE YOUR CLIENT'S BEST INTERESTS
	MAKE APPROPRIATE REFERRALS
	GET A COPY OF THE DFS CASE PLAN
	ATTEND ALL MTD'S AND COURT HEARINGS
	USE LITIGATION TOOLS AT THE HEARINGS
	DO WHAT IS NECESSARY AND REASONABLE TO REPRESENT YOUR CLIENT'S BEST INTERESTS
	ENSURE THE SAFETY, WELL-BEING, AND PERMANENCY FOR YOUR CLIENT (SEE PART THREE)
	IF THE CHILD IS PLACED OUT OF THE HOME, ENSURE VISITATION IS IN PLACE

	BE SURE THE CHILD'S EDUCATIONAL SETTING AND PLAN IS APPROPRIATE, CONTACT THE SCHOOL FOR INFORMATION, AND TALK TO HIS OR HER TEACHERS
	TRACK COLLATERAL JUDICIAL PROCEEDINGS
	WORK WITH THE CASA, IF ONE IS APPOINTED
	CONTINUE TO TALK TO THE CLIENT, FAMILY, FOSTER FAMILY, DFS WORKER, AND INDEPENDENTLY INVESTIGATE THE CASE (ONGOING); ADJUST THEORY OF CASE AND CLIENT'S BEST INTERESTS, AS NEEDED
	ADVOCATE FOR TIMELY PERMANENCY
	ENSURE YOUR CLIENT HAS ACCESS TO INDEPENDENT LIVING SERVICES
	SET YOUR CLIENT AND HIS OR HER FAMILY (BIOLOGICAL OR ADOPTIVE OR GUARDIANS) UP WITH AN APPROPRIATE TRANSITION PLAN (OUT OF JUVENILE COURT AND/OR FOSTER CARE)
	ENSURE YOU KNOW AND FOLLOW THE STATE AND FEDERAL LAWS THROUGHOUT THE PROCEEDING

Appointment Statute and Role P2-1.01.00

In Wyoming, it is your duty to represent clients in the hybrid role in abuse/neglect, TPR, and appellate proceedings. This means that you must represent the child's wishes and the child's best interest at the same time. The majority of the time, if you counsel the child appropriately and effectively, the child's wishes and the child's best interest will align. Wyoming Statute Section 14-3-211(a) sets forth this right of the child to representation by a hybrid model GAL. It states: "[t]he Court shall appoint counsel to represent any child in a Court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child's guardian *ad litem* unless a guardian *ad litem* has been appointed by the Court. The attorney or guardian *ad litem* shall be charged with representation of the child's best interest."

While it is your job, as defined by Wyoming Statute Section 14-3-222(a), to represent the child's best interest, it is important not to ignore the wishes of the child - even if they are contrary to what is thought to be best. In these situations, you should consider whether appointment of an attorney to represent the child's direct wishes is necessary. The law further contemplates the appointment of a separate attorney to represent the child's wishes if the Court so chooses.

How an Abuse/Neglect Case Gets To Juvenile Court P2-1.02.00

MANDATORY REPORTING OF CHILD ABUSE AND/OR NEGLECT P2-1.02.01

Wyoming law mandates that every person suspected of child abuse and/or neglect to the child must be reported to a protection agency or law enforcement.¹⁸ Knowingly making a false report of child abuse and/or neglect is a misdemeanor.¹⁹

INVESTIGATION/ASSESSMENT P2-1.02.02

Within 24 hours of a report of child abuse and/or neglect being made, DFS must initiate an investigation or assessment of the report. An investigation is initiated when

¹⁸ WYOMING STAT. ANN. § 14-3-205(A).

¹⁹ WYOMING STAT. ANN. § 14-3-205(D).

the report indicates that criminal charges could be filed for the alleged conduct, the child is in imminent danger and it is likely the child will be removed from the home, or when there is alleged child fatality, major injury or sexual abuse. If those circumstances do not exist, an assessment is initiated.²⁰

During the investigation process, DFS will make risk and safety assessments to determine whether there is a risk of maltreatment, whether the child is safe in the home, and whether the child needs to be removed from the home due to unresolvable safety issues.

At the conclusion of the investigation or assessment, DFS will determine whether the report of abuse and/or neglect was substantiated or unsubstantiated. If the report is substantiated, the parent will be listed on the central registry.²¹ Placement on the central registry is an administrative issue outside of Juvenile Court and a parent can be placed on registry even if not adjudicated in Court. This registry is confidential and maintained by DFS.

PROTECTIVE CUSTODY *P2-1.02.03*

Wyoming statute governs who can take a child into the protective custody of the state and under what circumstances.²²

- Law enforcement:
 - “There are reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody appears to be necessary for his protection”; or
 - “The child’s conduct or behavior seriously endangers himself and immediate custody appears necessary.”
- Physician/Physician’s Assistant/Nurse Practitioner:
 - “There is reasonable cause to believe an imminent danger to the child’s life, health or safety exists unless the child is taken into protective custody, whether or not additional medical treatment is required, and there is not time to apply for a Court order.”
- Court:
 - “Upon a finding that there is reasonable cause to believe that a child has been abused or neglected and that the child, by continuing in his place of residence or in the care and custody of the person responsible for his health, safety and welfare, would be in imminent danger of his life, health or safety.”

Temporary protective custody cannot exceed 48 hours, excluding weekends and legal holidays.

Once protective custody has been taken, DFS must be notified immediately and custody transferred to DFS as soon as possible.²³ When DFS accepts physical custody of the child, DFS makes efforts to inform the parents of the protective custody (including notifying the non-custodial parent, called a diligent search), initiates an investigation, assesses the child’s mental and physical health needs, arranges for the child’s education, and arranges for the care of the child in the “most appropriate and least restrictive setting necessary to meet the child’s needs.”

DFS may place a child with a non-custodial parent, extended family, a foster home, or other certified childcare facility. DFS must start a diligent search for all adult relatives

²⁰ WYOMING STAT. ANN. § 14-3-204.

²¹ WYOMING STAT. ANN. § 14-3-213.

²² WYOMING STAT. ANN. § 14-3-405.

²³ WYOMING STAT. ANN. § 14-3-208.

at this time as well, and notify the relatives within 30 days that the child has been taken into custody and they can be a placement resource. Prior to placing a child with a non-custodial parent or extended family member, DFS must determine whether anyone in the home has been convicted of a crime involving serious harm to children or has been “substantiated” for abuse and/or neglect.

DFS is required to notify the district or county attorney as soon as possible after a protective custody has been taken. Wyoming Statute Sections 14-3-407(c) & 14-3-408(a). The district or county attorney then determines whether the protective custody should stand or be released. Wyoming Statute Section 14-3-408(b). If released, no case in Juvenile Court would be filed.

Court Proceeding, Statutes, and Hearings P2-1.03.00

PETITION FILED P2-1.03.01

Once protective custody has been taken, the district or county attorney is required to promptly file and present to the Court a petition alleging abuse and/or neglect.²⁴ This petition “commences” the legal proceedings of Juvenile Court, and contains the necessary jurisdictional information.²⁵ A petition can be filed even if protective custody hasn’t been taken if the district or county attorney has sufficient information (usually from law enforcement or DFS) to believe that a child is abused and/or neglected.²⁶

Neglect is defined in Wyoming Statute Section 14-3-202(a)(vii), see also Child and Family Services Rules, Chapter 1, Section 4 (s). Abuse is defined in Wyoming Statute Section 14-3-202 (a)(ii), see also DFS, Child and Family Services Rules, Chapter 1, Section 4(b).

After the petition is filed, the Court must issue an order to appear to the respondents in the petition as well as any noncustodial parents or putative fathers.²⁷ Service of the order to appear must be made in accordance with Wyoming Statute Section 14-3-414 and 415. Failure of a parent to appear at the hearing after proper notice can result in the parent being held in contempt of Court or a bench warrant being issued.

SHELTER CARE HEARING P2-1.03.02

The shelter care hearing must be held within 48 hours (excluding weekends and holidays) of protective custody being taken.²⁸ The purpose of this hearing is to determine whether full-time shelter care is required to protect the child’s welfare pending further proceedings. For continued shelter care to be ordered, the Court must find that “returning the child to the home is contrary to the welfare of the child”. If it so finds, the child is placed into the custody of DFS. If such finding is not made, the Court may release the child to the custody of his parents and may impose a number of conditions upon the family pending further proceedings.²⁹

²⁴ WYOMING STAT. ANN. § 14-3-409(A).

²⁵ WYOMING STAT. ANN. § 14-3-412.

²⁶ WYOMING STAT. ANN. § 14-3-411.

²⁷ WYOMING STAT. ANN. § 14-3-413.

²⁸ WYOMING STAT. ANN. § 14-3-409.

²⁹ WYOMING STAT. ANN. § 14-3-409(D).

At the shelter care hearing, the Court is also required to advise the child and parents of the contents of the petition, the allegations, their rights in the Juvenile Court system, and the state's obligation to file a petition to terminate the parents' rights if the child remains in foster care for 15 of the most recent 22 months.³⁰

A party to a Juvenile Court proceeding has the following rights:

- A copy of the allegations;
- Confront and cross-examine adverse witnesses;
- Introduce evidence and present witnesses on his/her own behalf;
- Use of the Court's subpoena power to compel witnesses to testify or produce evidence; and
- Trial by jury if timely demanded (within 10 days of the advisement at the initial hearing).³¹

All relevant and material evidence helpful to the Court in determining whether shelter care is necessary is admissible, even if it would not be competent in an adjudicatory hearing.³²

Note: Don't forget about the IV-E required finding at this hearing and federal law requirements from Part One, like ICWA, ASFA, and Fostering Connections.

INITIAL HEARING *P2-1.03.03*

At the initial hearing, the Court must advise the respondents of the following:

- Their rights under the law;
- The specific allegations in the petition; and
- That the respondent may be responsible for child support should the child be placed in foster care.

The purpose of the initial hearing is to give the respondent(s) the opportunity to admit or deny the allegations in the petition.³³ If the respondent(s) admits the allegations, the Court adjudicates the child abused and/or neglected and proceeds. If the respondent(s) denies the allegations, the Court sets an adjudication hearing within 60 days or, at the latest, within 90 days of the date the petition was filed.³⁴ The shelter and initial hearings can also be held together. If the parent admits at this hearing, you go to dispositional hearing. If the respondent admits the allegations, he must lay a factual basis for the allegations (e.g. state, on the record, what he did that constituted abuse and/or neglect of the child). If they deny, you go to adjudication. You can also have a consent decree or stipulation.

ADJUDICATORY HEARING *P2-1.03.04*

The adjudicatory hearing is the trial on the allegations contained in the petition. The adjudicatory hearing can be to the bench or to a jury. The state has the burden to prove the allegations by a preponderance of the evidence.³⁵ Only competent, relevant, and material evidence is admissible at the adjudicatory hearing.³⁶ If a party wants a jury trial, they must request it within ten days of the initial hearing. This hearing must be set within 60 days, or for good cause can be set within 90 days.

³⁰ WYOMING STAT. ANN. § 14-3-409(B).

³¹ WYOMING STAT. ANN. § 14-3-423.

³² WYOMING STAT. ANN. § 14-3-409(E).

³³ WYOMING STAT. ANN. § 14-3-426.

³⁴ WYOMING STAT. ANN. § 14-3-426(B).

³⁵ WYOMING STAT. ANN. § 14-3-425(A).

³⁶ WYOMING STAT. ANN. § 14-3-426(B).

STIPULATION P2-1.03.05

The respondent can stipulate (e.g. agree) that the child can be adjudicated abused and/or neglected.³⁷ Basically, the respondent agrees that the state has enough evidence to prove the abuse and/or neglect, but does not want to admit to it outright. In most cases, the stipulation is also made pursuant to Rule 9 of the Wyoming Rules of Juvenile Court which prevents anything the respondent says in a multidisciplinary team meeting or case planning meeting to be used in a criminal case arising out of the same incident. If a stipulation is made and accepted by the Juvenile Court, the child is adjudicated abused and/or neglected and the case proceeds to the disposition.

CONSENT DECREE P2-1.03.06

If all parties agree, the Court can enter a consent decree, which gives the Court jurisdiction over the parties and the child.³⁸ The adjudication of the case is held in abeyance while the respondents work their case plan. If the respondents do what is required of them pursuant to the case plan, the case will be dismissed without an adjudication. If the respondents fail to work the case plan, the proceedings can be reinstated.³⁹ A consent decree can be entered with an admission or stipulation, that is, the respondent admits or stipulates to the allegations. If that is the case, and the petition is reinstated, the admission or stipulation is automatically entered on the record.⁴⁰ If the consent decree is entered without an admission or stipulation, the state proceeds to the adjudicatory hearing after the petition is reinstated. The consent decree remains in effect for no longer than six months, but can be extended for an additional six months if all parties agree.⁴¹ The District Attorney/County Attorney (DA/CA), GAL, and parents must all agree in order for a consent decree to be entered. It must be in writing and include the case plan.

DISPOSITION HEARING P2-1.03.07

The disposition hearing can be held immediately after the adjudication or admission or within 60 days of the adjudicatory hearing.⁴² The Court must consider the predisposition report, multidisciplinary team report, case plan, and any other reports or evaluations provided. If the Court orders a disposition different than the recommendation of the predisposition report or multidisciplinary team report, it must make specific findings of fact relied on to support that decision. The Court must also ensure that reasonable efforts were made by DFS to prevent or eliminate the need for removal of the child from his or her home or to make it possible for the child to return home.

Court shall not order an out-of-state (OOS) placement unless:

- Evidence has been presented to Court regarding costs of OOS and in-state (IS) placement and whether or not an IS facility is available or currently available;
- Affirmative finding on record that no placement in Wyoming can provide adequate treatment or services for the child; AND

³⁷ WYOMING RULES OF JUVENILE PROCEDURE 7.

³⁸ WYOMING STAT. ANN. § 14-3-428.

³⁹ WYOMING STAT. ANN. § 14-3-428(F).

⁴⁰ WYOMING STAT. ANN. § 14-3-428(F).

⁴¹ WYOMING STAT. ANN. § 14-3-428(D).

⁴² WYOMING STAT. ANN. § 14-3-426(C).

- Court states on record why no IS placement is available.⁴³

If the Court orders placement of a child at a psychiatric residential treatment facility, the order cannot state the specific facility or level of care.⁴⁴ Orders of disposition remain in effect indefinitely until terminated by the Court.⁴⁵ Orders of disposition will terminate when the child turns 18 unless the Court has ordered that care or services continue past that time. Six (6) months prior to the child's 18th birthday, the Court must hold a review hearing to determine whether care or transitional services should continue and for what period of time. All disposition orders must terminate upon the child turning 21.⁴⁶

REVIEW HEARINGS *P2-1.03.08*

The Court must conduct review hearings every six months in cases where the child is removed from the home.⁴⁷ At the review hearing, the Court must determine the following:

- The health and safety of the child;
- The continuing necessity for placement;
- The reasonableness of reunification efforts and whether those efforts are consistent with the case plan;
- The appropriateness of the case plan and the extent of compliance with the case plan;
- Whether progress has been made toward alleviating or mitigating the causes necessitating placement outside the home and the extent of that progress; and
- The date the child is expected to be returned home or placed for adoption or guardianship.

PERMANENCY HEARINGS *P2-1.03.09*

The Court must conduct a Permanency Hearing no later than 12 months after the child's removal from the home, and at least every twelve months thereafter.⁴⁸ A Permanency Hearing is also required within 30 days of a determination by the Court that reasonable efforts are not required. A Permanency Hearing is different than a 12 Month Review Hearing. A GAL should ensure that the proper evidence is presented at a Permanency Hearing.

At the Permanency Hearing, the Court must determine whether reasonable efforts were provided to reunify the family.⁴⁹ The Court must also determine whether the permanency plan is in the best interest of the child and whether DFS has made reasonable efforts to finalize the permanency plan.⁵⁰ A GAL should ensure all Court orders accurately reflect the purpose of the hearing.

At the Permanency Hearing DFS must present to the Court:

- The efforts made to effectuate the permanency plan for the child;
- Address the options for permanency;
- Examine the reasons for excluding permanency options; and
- Set forth the proposed plan to carry out the placement decision, including specific times for

⁴³ WYOMING STAT. ANN. § 14-3-429(A)(v).

⁴⁴ WYOMING STAT. ANN. § 14-3-429(c)(iv).

▪ ⁴⁵ WYOMING STAT. ANN. § 14-3-431(A).

⁴⁶ WYOMING STAT. ANN. § 14-3-431(B).

⁴⁷ WYOMING STAT. ANN. § 14-3-431(C).

⁴⁸ WYOMING STAT. ANN. § 14-3-431(D).

⁴⁹ Wyoming Stat. Ann. § 14-3-431(F).

⁵⁰ Wyoming Stat. Ann. § 14-3-431(K).

achieving the permanency plan.

If a permanency plan other than reunification, adoption, or guardianship is proposed, DFS must present a compelling reason for such plan.⁵¹

15 OF 22 *P2-1.03.10*

When a child has been in foster care under the responsibility of the state for 15 of the most recent 22 months, the state is required to file a petition to terminate parental rights.⁵² There are a few exceptions to this mandatory rule. The state can choose not to file a petition to terminate parental rights if:

- The child has been in the care of a relative;
- There is a compelling reason for determining that termination of parental rights is not in the child's best interest; or
- DFS has not provided reasonable efforts to return the child to the home.

HEARING CHECKLISTS *P2-1.03.11*

The Wyoming Children's Justice Project has created hearing checklists that you can use for each hearing in an abuse/neglect case. There is a long form with a lot of detail, and a short form that can be printed and placed in your file before Court. You can find these at:

<http://www.Courts.state.wy.us/ViewPage.aspx?PageURL=CJP/Neglect%20Hearing%20Checklists.htm>.

Wyoming Case Law P2-1.04.00

The following recent, seminal cases (listed in date order) were decided by the Wyoming Supreme Court and apply to abuse and neglect proceedings. The findings and cases are listed below. For a more detailed case summary for each case and more case law summaries, please see the yearly Dependency Dockets on the GAL Program Website.

- Evidence: The District Court did not abuse its discretion in ordering the production of exculpatory evidence one day before trial and did not violate father's due process in refusing to dismiss the case. *In the Interest of MM: MM vs. The State of Wyoming, Department of Family Services*, 2009 WY 28, 202 P.3d 409 (Wyo. 2008).
- Reasonable Efforts: The state may discontinue reunification efforts so long as the state proves by a preponderance of the evidence that such efforts would be futile. *In the Interest of NDP vs. The State of Wyoming, Department of Family Services*, 2009 WY 28, 2009 WL 15131560 (Wyo. 2009).
- Jurisdiction: The 90-day statutory requirement for an adjudicatory hearing does not result in the termination of subject matter jurisdiction by the Juvenile Court. *In the Interest of DSB: JA v. vs. The State of Wyoming, Department of Family Services*, 2008 WY 15, 176 P.3d 633 (Wyo. 2008).
 - Due process - contempt: All due process rights mandated by law must be granted to parties in a Juvenile Court action accused of contempt; contempt proceedings arising from Juvenile Court must be conducted as an independent criminal action apart

⁵¹ Wyoming Stat. Ann. § 14-3-431(i).

⁵² Wyoming Stat. Ann. § 14-3-431(m).

from underlying juvenile case. *In the Interest of BD, JW AND CW: BW v. The State of Wyoming*, 2010 WY 18, 226 P.3d 272, (Wyo. 2010).

- Admissions: Juvenile Court is vested with discretion when considering whether to grant a motion to withdraw a voluntary admission of neglect, even if respondent suffers from a mental illness. *In the Interest of DRT, A Minor. Jet, v. The State of Wyoming, Department of Family Services*, 2010 WY 137, 241 P.3d 489, (Wyo. 2010).

Child Abuse and Neglect Indicators P2-1.05.00

Children who are victims of abuse and/or neglect will often exhibit both behavioral and emotional, as well as physical indicators, of abuse and/or neglect. Obviously, every case is different and every child is different, so the following is not an exhaustive list of indicators. If you suspect additional or varied neglect and/or abuse other than what formed the basis for the child being brought into care, consulting the appropriate person (doctor, therapist, investigator) might help. The following list(s) were derived from *Justice for Children* by John M. Burman, beginning on page 138.

INDICATORS OF PHYSICAL ABUSE P2-1.05.01

- Unexplained bruising or welts
 - Especially in places that a child would not normally display bruising or welts for their developmental age;
 - Bruising that is in various stages of healing;
 - Clustered bruising or welts that form regular patterns;
 - Bruising or welts that form or exhibit the shape of an object;
 - Bruising in several different areas;
 - Bruising that regularly appears.
- Unexplained burns
 - Cigar or cigarette burns;
 - Burns in places on the body such as back, soles of feet, palms of hands, or buttocks;
 - Immersion burns;
 - Patterned like an appliance (i.e., iron, cooktop, heater);
 - Rope burns on arms, legs, and torso.
- Unexplained fractures or dislocations
 - Especially to skull or face;
 - Varied in stages.
- Unexplained cuts or abrasions
 - Especially to the mouth, lips, gums, eyes;
 - Genitalia;
 - Varied in stages of healing.

A physically abused child may exhibit many signs of being abused. The child may react strangely to punishment, be wary of adults or other children, be overly aggressive or withdrawn, be afraid of his or her custodians or other family member and be afraid to go home, strive to get attention, react strangely when physically examined (i.e., not be afraid of a physical examination or be overly afraid of an examination), exhibit a maturity level either above or below the child's developmental age, have muted senses.

INDICATORS OF SEXUAL ABUSE *P2-1.05.02*

The indicators of sexual abuse can be slightly more difficult to assess and often cannot be confirmed without a thorough physical examination. You should always refer a child who has suffered suspected sexual abuse to the appropriate professional.

- Difficulty walking or sitting;
- Venereal disease, especially in preteens;
- Reports of a child being overly modest (such as refusing to change for gym class);
- Withdrawal, fantasy, or infantile behavior;
- Inappropriate sexual behavior and/or knowledge for the developmental level;
- Poor peer relationships;
- Delinquent behavior or running away;
- Significant change in school performance or interest levels in extracurricular activities;
- Low self-esteem.

INDICATORS OF PHYSICAL NEGLECT *P2-1.05.03*

- Underweight, poor growth pattern (failure to thrive);
- Consistent hunger or strange behavior regarding food;
- Poor hygiene, dress;
- Consistent lack of supervision (especially when the child is engaged in risky behaviors/activities);
- Wasting or subcutaneous tissues;
- Unattended physical problems or needs;
- Abandonment;
- Poor school attendance/performance;
- Constant fatigue;
- Inappropriate seeking of affection;
- Assuming an adult role (parentification);
- Drugs or alcohol abuse;
- Delinquency.

INDICATORS OF EMOTIONAL OR PSYCHOLOGICAL ABUSE *P2-1.05.04*

- Speech, learning or habit disorders;
- Developmental delays;
- Failure to thrive;
- Hypersensitive or disruptive behavior;
- Neurotic traits;
- Psychosomatic behavior;
- Behavior extremes;
- Overly adaptive behavior such as inappropriately adult-like or child-like;
- Attempted or threatened suicide;
- Low self-esteem.

PHYSICAL OR BEHAVIORAL INDICATORS OF PSYCHOLOGICAL ABUSE *P2-1.05.05*

- Eating disorders;
- Developmentally inappropriate wetting or soiling;
- Sleep disturbances and/or nightmares;
- Failure to thrive;
- Speech disorders, stuttering;
- Asthma, severe allergies or gastrointestinal issues;
- Developmentally delayed;
- Habit disorders;
- Poor peer relationships;
- Behavioral extremes;
- Chronic academic underachievement;
- Sad appearance, apathy/lack of responsiveness.

Responses of Abused and Neglected Children *P2-1.06.00*

The following are typical or common statements of children who have been abused and/or neglected. Again, this is not an exhaustive list:

- I'm the only one this happened to.
- It's my fault. I'm the one to blame.
- I feel guilty, confused, hurt, rejected.
- I don't want to talk about it. I'm scared to tell. I can't talk to mom.
- I'm no good. I don't like me. I don't have friends. I'm not pretty, smart, etc. I'm ugly.
- I don't trust anyone (parents, men).
- I'm not important. My needs aren't important. Parents' needs come first.
- No one believes me, so maybe it didn't happen.
- No one likes me. No one plays with me.
- People can tell what's happened to me. I'm different.

IMPACT OF MALTREATMENT *P2-1.06.01*

The consequences or impact of maltreatment is varied and far-reaching. The consequences can vary depending on the gender of the victim, with males being more likely to “externalize” the effects of maltreatment and females being more likely to “internalize” maltreatment. One study has found that a history of physical abuse or neglect increased the odds of arrest as a minor or as an adult by 60%.⁵³ Maltreatment can cause someone to be more likely to struggle with drugs and/or alcohol and/or suicide. Other areas victims of maltreatment can experience problems are with physical health, missing work due to illness, depressed feelings, frequent emotional outbursts, and frequent conflicts.

Another study has found that maltreated children in general were more negative, non-affectionate, and avoidant of their mothers, and they lacked enthusiasm and persistence in age-appropriate tasks. They were more likely to be angry, showed a lack of self-control, were judged to be avoidant, and low in self-esteem. In the same study,

⁵³ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE (2010).

physically abused children were identified by teachers as “extremely inattentive, unpopular, aggressive, and overactive. They were more likely to engage in self-destructive and obsessive-compulsive behavior.”⁵⁴

CROSSOVER YOUTH *P2-1.06.02*

You need to be aware that often times, the young clients in abuse and neglect cases will be at risk for delinquency and CHINS cases as well. It is not uncommon for the abused and/or neglected child to be “habitually truant” or “runaway” or to have behavior issues that result in a possible delinquency proceeding. You can be involved in these “other” proceedings upon appointment by the Court and it can be very helpful for the child to have that consistency as well as for you to best serve the child’s needs. Although the child will have his or her own attorney in a delinquency or a CHINS proceeding, you maintain the role of advocating for the child’s best interest. If the situation arises where the child is subject to an abuse/neglect case and a CHINS or a delinquency case at the same time, you can meet with team members and perhaps advocate for only one case (the one that best suits the needs of the child) moving forward.

Family Dynamics in a Home with Abuse and/or Neglect *P2-1.07.00*

Every family and home situation is different in abuse and neglect cases. Several factors, however, such as how parents were cared for in their own childhood, the existence of one of more types of “crisis” in the home, some feature or behavior of the child that “triggers” parental anger or falls short of parental expectations, and isolation from needed support of intervention from other adults are present singly or in combination in almost every confirmed child abuse or neglect case.⁵⁵ Normal child development requires parents who can meet the needs of their child, subordinating the parents’ own needs, such as emotional reassurance that they are not inadequate, emotional closeness, or love. Maltreatment can occur whenever a parent’s needs overwhelm his or her ability to give a dependent child what the child must have to be safe and have a normal development.

The early life experience of the caregiver is one of the major indicators of why some parents abuse their children. Some abused children are able to cope as they reach adulthood and never abuse their own children, however, some maltreated children will repeat the cycle. Economic indicators are also important. Poverty in the U.S. is associated with physical abuse and neglect more strongly than with sexual abuse, which is more likely to be reported from all of the socio-economic classes.⁵⁶ Genetics can also play a role in maltreatment in terms of underpinning some other factors such as depression, substance abuse, and mental illness.

Visitation *P2-1.08.00*

IMPORTANCE OF VISITATION *P2-1.08.01*

Immediate and frequent visitation between the child and his or her caretaker/parent(s) helps maintain the child’s identity and reduces trauma. It also

⁵⁴ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE (2010).

⁵⁵ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 123 (2010).

⁵⁶ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 126 (2010).

influences future safety decision-making.⁵⁷ The parties should avoid “cookie-cutter” visitation plans as these often place needless restrictions/barriers on parent-child contact and delay reunification. The parties should always keep in mind why the child was removed in determining a visitation plan.

LAW P2-1.08.02

The Adoption Assistance and Child Welfare Act of 1980 (AACWA) as well as the Adoption and Safe Family Act (ASFA) mandates that “reasonable efforts” be made to reunify children with their parents. As such, a solid visitation plan should be developed immediately to increase the likelihood of reunification by disrupting the bond/relationship between the child and caregiver as little as possible. Of course, in determining “reasonable efforts” to be made with respect to the child, the child’s health and safety is to be of paramount concern. Your role as the GAL is to advocate for visitation for your client in the location, frequency, and type that is in your client’s best interests. This oftentimes means relying on a counselor or other mental health professional to determine what is best for the client, but be sure the counselor understands that the law requires visitation as part of reasonable efforts.

EXAMPLES AND TYPES OF VISITATION PLANS P2-1.08.03

The parties should evaluate the needs of the family against safety concerns when forming a visitation plan. The need for supervised visitation is often present, however, should not be an automatic assumption. Typically, the visitations will progress as follows: supervised visits by either DFS or another organization/individual (until the safety need is no longer present), unsupervised visits with unannounced drop-ins by either yourself or DFS, unsupervised visits without drop-ins, overnight and extended visits, and finally trial-home placement with or without drop-ins. There are also specific visitation plans that are trauma informed and can be used when the child has been through a significant trauma, as well as therapeutic visitation for relationships that may need some intervention to improve.

VISITATION CUES P2-1.08.04

Often times, upon observing a visit between a parent/caregiver and the child, you can pick up on several cues. Look especially for non-verbal cues, as these can be the most telling. If the child will not go to the parent/caregiver, for instance, this should be explored with the aid of a therapist working with the family and the child. It is incumbent upon you to pay close attention to the visitation cues in order to best advocate for the child.

Infants and Toddlers in Foster Care P2-1.09.00

You should be aware that time can be of the essence in the secure attachment of children, especially infants and toddlers. It is not good for children to be moved from one caregiver, parent, or foster parent to another for more than a very limited time, generally measured in hours for infants and days for toddlers, without very important reasons of safety or, in some situations, a clear diagnostic purpose.⁵⁸ Every move will impact the child, and may cause the child more harm in terms of loss and depression.

⁵⁷ ID. AT 310.

⁵⁸ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 136 (2010).

Careful and thoughtful consideration must be given to each and every move for these very young clients. Furthermore, as indicated in the section regarding visitation, frequent visitation (pending safety concerns) must occur with these young children in order for the attachment and bond to progress between the child and his or her parent(s). Consider having visits in the foster home, as the environment is less superficial than a visitation room at DFS and the foster parent can “model” for the parent(s).

Levels of Out-Of-Home Care P2-1.10.00

There are levels of out-of-home care that are thought to be less disruptive to children. Before placing a child out of the home, however, first consider whether the child can be left in the home with or without DFS supervision as to avoid removal of the child. If removal is necessary, consider placing the child with a suitable relative or adult caretaker that the child is familiar with. If there is no suitable relative or adult available, the child should be placed in a foster home. Please see other sections with regards to residential or psychiatric treatment facility placements.

NEED MORE?

Burman, *Justice for Children*, Sections 2.5 and 7.0.
 Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, p. 631-33.
 Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapters 2, 4, 16, 29.
 Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 7.4, p. 127-129.
 Hearing Checklists, CJP, <http://www.Courts.state.wy.us/ViewPage.aspx?PageURL=CJP/Neglect%20Hearing%20Checklists.htm>.
 Dependency Dockets, GAL Program Website, gal.wyo.gov.
 Wyoming State Statutes, Title 14, Chapter 3.

[*Return to Checklist*](#)

Section Two: Child In Need of Supervision Proceeding P2-

2.00.00

<input type="checkbox"/>	REVIEW THE APPOINTMENT ORDER
<input type="checkbox"/>	CLEARLY UNDERSTAND YOUR ROLE
<input type="checkbox"/>	MEET YOUR CLIENT
<input type="checkbox"/>	GET APPROVAL FROM REPRESENTED PARTIES TO MEET WITH THEIR CLIENTS (I.E. THE PARENTS)
<input type="checkbox"/>	MEET THE FAMILY AND ENSURE DILIGENT SEARCH FOR NON-CUSTODIAL PARENT AND FAMILY IS BEING CONDUCTED BY DFS
<input type="checkbox"/>	REVIEW AND REQUEST DISCOVERY

	REVIEW THE CASE FILE AND RECORDS
	LOOK FOR ICWA OR DOMESTIC VIOLENCE IMPLICATIONS
	TALK TO THE DFS WORKER
	REQUEST A JURY, IF NEEDED
	INDEPENDENTLY INVESTIGATE THE CASE (MAY INCLUDE TALKING TO PROVIDERS, REVIEWING RECORDS, OBSERVING VISITATIONS, ETC.)
	CONTINUE TO MEET WITH YOUR CLIENT (REGARDLESS OF AGE OR PLACEMENT LOCATION)
	MEET WITH THE FOSTER FAMILY, IF APPLICABLE
	CONDUCT HOME VISIT(S)
	DEVELOP A THEORY OF THE CASE
	DETERMINE YOUR CLIENT'S BEST INTERESTS
	MAKE APPROPRIATE REFERRALS
	GET A COPY OF THE DFS CASE PLAN
	ATTEND ALL MTD'S AND COURT HEARINGS
	USE LITIGATION TOOLS AT THE HEARINGS
	DO WHAT IS NECESSARY AND REASONABLE TO REPRESENT YOUR CLIENT'S BEST INTERESTS
	ENSURE THE SAFETY, WELL-BEING, AND PERMANENCY FOR YOUR CLIENT (SEE PART THREE)
	IF THE CHILD IS PLACED OUT OF THE HOME, ENSURE VISITATION IS IN PLACE
	BE SURE THE CHILD'S EDUCATIONAL SETTING AND PLAN IS APPROPRIATE, CONTACT THE SCHOOL FOR INFORMATION, AND TALK TO HIS OR HER TEACHERS
	TRACK COLLATERAL JUDICIAL PROCEEDINGS
	WORK WITH THE CASA, IF ONE IS APPOINTED
	CONTINUE TO TALK TO YOUR CLIENT, FAMILY, FOSTER FAMILY, DFS WORKER, AND INDEPENDENTLY INVESTIGATE THE CASE (ONGOING); ADJUST THEORY OF CASE AND CLIENT'S BEST INTERESTS, AS NEEDED
	ADVOCATE FOR TIMELY PERMANENCY
	ENSURE YOUR CLIENT HAS ACCESS TO INDEPENDENT LIVING SERVICES
	SET YOUR CLIENT AND HIS OR HER FAMILY (BIOLOGICAL OR ADOPTIVE OR GUARDIANS) UP WITH AN APPROPRIATE TRANSITION PLAN (OUT OF JUVENILE COURT AND/OR FOSTER CARE)
	ENSURE YOU KNOW AND FOLLOW THE STATE AND FEDERAL LAWS THROUGHOUT THE PROCEEDING

Appointment Statute and Role P2-2.01.00

In CHINS proceedings, your role in Wyoming changes to that of a pure best interest attorney. This is because a child in this proceeding has a right to an attorney who provides direct representation. Wyoming Statutes Section 14-6-422(a) sets forth the right to counsel for all children in CHINS proceedings. Rule 5(A) of the Wyoming Rules of Procedure for Juvenile Courts also state:

"The Respondent is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule." The child may have two attorneys—one direct attorney and one best interest GAL. Wyoming Statutes Section 14-6-416 states: "The Court shall appoint a guardian *ad litem* for a child who is a party to the proceedings under this act if the child has no parent, guardian or custodian appearing in his behalf or if the interests of the parents, guardian or custodian are adverse to the best interest of the child."

Part of your role as a best interest attorney in CHINS proceedings is to ensure that the child understands this right to a direct attorney and is appointed or hires a direct attorney if the child so wishes, as their representation and protection of their rights is essential. In a CHINS proceeding, if the child qualifies financially, a public defender (PD) can be appointed to represent the child pursuant to Wyoming Statutes Section 7-6-112(a)(i). If the child declines counsel, you should be cognizant of the fact that the child may later in the proceedings still require direct representation and may need to take steps to ensure that counsel is provided. You should make contact with the PD prior to talking with the dually represented client.

In order for a GAL to be appointed in a CHINS proceeding the court or a party to the action (district or county attorney or parent's attorney) must request it and the court must find that the parents are gone or the parents' interests are adverse to the child's. You cannot ask the court to appoint you because you would not be a party to the case before being appointed.

How a CHINS Case Gets To Juvenile Court P2-2.02.00

A CHINS Case is opened by one of two ways. One, the county/district attorney files a petition into Juvenile Court based off a referral from a parent, school, or provider, or based off of a citation for an offense. Before filing a petition, the county/district attorney is required to consider the following diversion options:

- “(i) Alternative community programs;
- (ii) Mental health counseling services available to the family;
- (iii) Family preservation services offered by the department of family services;
- (iv) Use of truancy statute enforcement;
- (v) Municipal and circuit Court remedies; or
- (vi) If the child has reached his sixteenth birthday, whether or not the child presents a clear and present danger to himself, his family or the community.”⁵⁹

The second way a CHINS proceeding begins is that protective custody can be taken by law enforcement if:

- Circumstances would permit an arrest without warrant under Wyoming Statutes Section 7-2-102;
- Reasonable grounds to believe a child has violated the terms of Juvenile Court order;
- Reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody is necessary for his protection;
- Child's conduct seriously endangers himself; or
- Reasonable grounds exist to believe child has run away from home.⁶⁰

Once a child is taken into protective custody or detention, the parent must be notified as soon as possible. The child shall be interviewed by DFS within 24 hours, excluding weekends and legal holidays, after the child is taken into custody. DFS shall submit a written report of the interview to the Court, including an assessment of the immediate needs of the child and a recommendation for the most appropriate placement for the child pending Court disposition or execution of a Court order for placement or commitment.⁶¹ A CHINS child also must be released and not held in detention or shelter care unless it is authorized by Court order or required to:

⁵⁹ WYOMING STAT. ANN. § 14-6-411.

⁶⁰ WYOMING STAT. ANN. § 14-6-405.

- Protect the child,
- Prevent the child from being removed from the jurisdiction of the Court, or
- Provide supervision for a child “having no parent, guardian, custodian, or other responsible adult.”⁶²

Court Proceeding, Statutes, and Hearings P2-2.03.00

DEFINITION OF A CHINS CHILD P2-2.03.01

Any child who has not reached his 17th birthday who:

- Is habitually truant or has run away from home;
- Habitually disobeys reasonable and lawful demands of his parents, guardian, custodian or other proper authority;
- Is ungovernable and beyond control; or
- Has committed a status offense.⁶³

DETENTION/SHELTER CARE HEARING P2-2.03.02

The shelter care hearing must be held within 48 hours (excluding weekends and holidays) of protective custody being taken.⁶⁴ The purpose of this hearing is to determine if further detention or shelter care is required pending further Court action.⁶⁵ They can order continued detention/shelter care if “returning the child to the home is contrary to the welfare of the child.”⁶⁶

At the shelter care hearing, the Court is also required to advise the child of:

- The contents of the petition;
- The allegations;
- Right to counsel;
- A copy of the allegations;
- Confront and cross-examine adverse witnesses;
- Introduce evidence and present witnesses on his/her own behalf;
- Use of the Court’s subpoena power to compel witnesses to testify or produce evidence;
- Trial by jury if timely demanded (within 10 days of the advisement at the initial hearing); and,
- Right to appeal.⁶⁷

If the Court orders the child’s release, the Court can place restrictions on child’s travel, associates, activities, or place of abode before adjudication.⁶⁸ All relevant and material evidence helpful to the Court in determining whether shelter care is necessary is admissible, even if it would not be competent in an adjudicatory hearing.⁶⁹

⁶¹ WYOMING STAT. ANN. § 14-6-409(A).

⁶² WYOMING STAT. ANN. § 14-6-406.

⁶³ WYOMING STAT. ANN. § 14-6-402(A)(IV).

⁶⁴ WYOMING STAT. ANN. § 14-6-409(A).

⁶⁵ WYOMING STAT. ANN. § 14-6-409(A).

⁶⁶ WYOMING STAT. ANN. § 14-6-409(D).

⁶⁷ WYOMING STAT. ANN. § 14-6-409(B), 14-6-422, AND 14-6-423.

⁶⁸ WYOMING STAT. ANN. § 14-6-409(D).

⁶⁹ WYOMING STAT. ANN. § 14-6-409(E).

INITIAL HEARING *P2-2.03.03*

At the initial hearing, the Court must advise the parties of the following:

- Their rights under the law;
- The specific allegations in the petition; and
- That they may be liable for costs of service and treatment.

The purpose of the initial hearing is to give the respondent the opportunity to admit or deny the allegations in the petition.⁷⁰ If the respondent admits the allegations, the Court adjudicates the child in need of supervision and proceeds. If the respondent denies the allegations, the Court sets an adjudication hearing within 60 days or, at the latest, within 90 days of the date the petition was filed.⁷¹ The shelter and initial hearings can also be held together. You can also have a consent decree or stipulation.

ADJUDICATORY HEARING *P2-2.03.04*

The adjudicatory hearing is the trial on the allegations contained in the petition. The adjudicatory hearing can be to the bench or to a jury. The state has the burden to prove the allegations beyond a reasonable doubt.⁷² Only competent, relevant, and material evidence is admissible at the adjudicatory hearing.⁷³ If a party wants a jury trial, they must request it within ten days of the initial hearing. This hearing must be set within 60 days or for good cause can be set within 90 days.

CONSENT DECREE *P2-2.03.05*

If all parties agree, the Court can enter a consent decree, which gives the Court jurisdiction over the parties and the child.⁷⁴ The adjudication of the case is held in abeyance while the child works his or her case plan. If the child does what is required pursuant to the case plan, the case will be dismissed without an adjudication. If the child fails to work the case plan, the proceedings can be reinstated.⁷⁵ The consent decree remains in effect for no longer than one year if all parties agree.⁷⁶ The DA/CA, child's legal representative, and the child must all agree in order for a consent decree to be entered.⁷⁷ It must be in writing and include the case plan.⁷⁸

DISPOSITION HEARING *P2-2.03.06*

The disposition hearing can be held immediately after adjudication/admission or within 60 days of the adjudicatory hearing.⁷⁹ The Court must consider the predisposition report, multidisciplinary team report, case plan, and any other reports or evaluations provided. If the Court orders a

⁷⁰ WYOMING STAT. ANN. § 14-6-426.

⁷¹ WYOMING STAT. ANN. § 14-6-426(B).

⁷² WYOMING STAT. ANN. § 14-6-426(A).

⁷³ WYOMING STAT. ANN. § 14-6-426(B).

⁷⁴ WYOMING STAT. ANN. § 14-6-428.

⁷⁵ WYOMING STAT. ANN. § 14-6-428.

⁷⁶ WYOMING STAT. ANN. § 14-3-428(C).

⁷⁷ WYOMING STAT. ANN. § 14-6-428(A).

⁷⁸ WYOMING STAT. ANN. § 14-6-428(B).

⁷⁹ WYOMING STAT. ANN. § 14-6-426(C).

disposition different than the recommendation of the predisposition report or multidisciplinary team report, it must make specific findings of fact relied on to support that decision.

The Court must also ensure that reasonable efforts were made by DFS to prevent or eliminate the need for removal of the child from his or her home or to make it possible for the child to return home.⁸⁰

The Court shall not order an out-of-state (OOS) placement unless:

- Evidence has been presented to Court regarding costs of OOS and in-state (IS) placement and whether or not an IS facility is available or currently available;
- Affirmative finding on record that no placement IS can provide adequate treatment or services for the child; AND,
- Court states on record why no IS placement is available.⁸¹

If the Court orders placement of a child at a psychiatric residential treatment facility, the order cannot state the specific facility or level of care.⁸²

The dispositional order is in effect for not more than one (1) year, and a hearing must be held before expiration of the dispositional order to determine if another order is needed.⁸³ All disposition orders must terminate upon the child turning 17.⁸⁴ Jurisdiction of the Court in a CHINS case ends at 17. This was confirmed in a recent Supreme Court case, *In the Interest of MF v. The State of Wyoming*, 2013 WY 104.

REVIEW HEARINGS *P2-2.03.07*

If the child is placed in out-of-home placement, the Court must conduct review hearings every six (6) months.⁸⁵ At the review hearing, the Court must determine the following:

- Appropriateness of placement;
- Reasonable efforts to reunify;
- Safety of the child; and
- Permanency plan for the child.⁸⁶

Permanency for your CHINS client is just as important as a client in an abuse or neglect proceeding. So, ensure you are planning for this just as you would in other Juvenile Court proceedings. This includes asking for a change in permanency plan if needed, and TPR if appropriate.

PARENTS AND GUARDIANS *P2-2.03.08*

Parents and guardians must be present at Court hearings in CHINS proceedings. If they don't attend, they are liable for contempt of Court and Court may issue a bench warrant.⁸⁷

⁸⁰ WYOMING STAT. ANN. § 14-6-429(A)(IV).

⁸¹ WYOMING STAT. ANN. § 14-6-429(A)(V).

⁸² WYOMING STAT. ANN. § 14-6-429(C)(IV).

⁸³ WYOMING STAT. ANN. § 14-6-429(H).

⁸⁴ WYOMING STAT. ANN. § 14-6-431(B).

⁸⁵ WYOMING STAT. ANN. § 14-6-429(C)(I)(B).

⁸⁶ WYOMING STAT. ANN. § 14-6-429(C)(I)(B).

⁸⁷ WYOMING STAT. ANN. § 14-6-415.

CHINS PLACEMENTS *P2-2.03.09*

There are specific statutory requirements for the out-of-home placement of children in CHINS proceeding. Be sure the placement of your client meets these requirements:

- Must be least restrictive (which may be foster care).
- Cannot be detained in jail or juvenile detention center unless there is also a delinquency action or the child is being held for violating a Court order.
- Cannot be detained in the Wyoming Boys or Girls School unless the child is at least 12 years old and also found delinquent.⁸⁸

Also, the Court must make specific findings to place the child OOS.⁸⁹

NEED MORE?

Wyoming State Statutes, Title 14, Chapter 6, Article 4.
In the Interest of MF v. The State of Wyoming, 2013 WY 104.
Burman, *Justice for Children*, Section 8.0.

[*Return to Checklist*](#)

Section Three: Delinquency Proceeding *P2-3.00.00*

<input type="checkbox"/>	REVIEW THE APPOINTMENT ORDER
<input type="checkbox"/>	CLEARLY UNDERSTAND YOUR ROLE
<input type="checkbox"/>	MEET YOUR CLIENT
<input type="checkbox"/>	GET APPROVAL FROM REPRESENTED PARTIES TO MEET WITH THEIR CLIENTS (I.E. THE PARENTS)
<input type="checkbox"/>	MEET THE FAMILY AND ENSURE DILIGENT SEARCH FOR NON-CUSTODIAL PARENT AND FAMILY IS BEING CONDUCTED BY DFS
<input type="checkbox"/>	REVIEW AND REQUEST DISCOVERY
<input type="checkbox"/>	REVIEW THE CASE FILE AND RECORDS
<input type="checkbox"/>	LOOK FOR ICWA OR DOMESTIC VIOLENCE IMPLICATIONS
<input type="checkbox"/>	TALK TO THE DFS WORKER
<input type="checkbox"/>	REQUEST A JURY, IF NEEDED
<input type="checkbox"/>	INDEPENDENTLY INVESTIGATE THE CASE (MAY INCLUDE TALKING TO PROVIDERS, REVIEWING RECORDS, OBSERVING VISITATIONS, ETC.)
<input type="checkbox"/>	CONTINUE TO MEET WITH YOUR CLIENT (REGARDLESS OF AGE OR PLACEMENT LOCATION)
<input type="checkbox"/>	MEET WITH THE FOSTER FAMILY, IF APPLICABLE
<input type="checkbox"/>	CONDUCT HOME VISIT(S)
<input type="checkbox"/>	DEVELOP A THEORY OF THE CASE
<input type="checkbox"/>	DETERMINE YOUR CLIENT'S BEST INTERESTS
<input type="checkbox"/>	MAKE APPROPRIATE REFERRALS

⁸⁸ WYOMING STAT. ANN. § 14-6-407.

⁸⁹ WYOMING STAT. ANN. § 14-6-429 (A)(v).

	GET A COPY OF THE DFS CASE PLAN
	ATTEND ALL MTD'S AND COURT HEARINGS
	USE LITIGATION TOOLS AT THE HEARINGS
	DO WHAT IS NECESSARY AND REASONABLE TO REPRESENT YOUR CLIENT'S BEST INTERESTS
	ENSURE THE SAFETY, WELL-BEING, AND PERMANENCY FOR YOUR CLIENT (SEE PART THREE)
	IF THE CHILD IS PLACED OUT OF THE HOME, ENSURE VISITATION IS IN PLACE
	BE SURE THE CHILD'S EDUCATIONAL SETTING AND PLAN IS APPROPRIATE, CONTACT THE SCHOOL FOR INFORMATION, AND TALK TO THEIR TEACHERS
	TRACK COLLATERAL JUDICIAL PROCEEDINGS
	WORK WITH THE CASA, IF ONE IS APPOINTED
	CONTINUE TO TALK TO YOUR CLIENT, FAMILY, FOSTER FAMILY, DFS WORKER, AND INDEPENDENTLY INVESTIGATE THE CASE (ONGOING); ADJUST THEORY OF CASE AND CLIENT'S BEST INTERESTS, AS NEEDED
	ADVOCATE FOR TIMELY PERMANENCY
	ENSURE YOUR CLIENT HAS ACCESS TO INDEPENDENT LIVING SERVICES
	SET YOUR CLIENT AND HIS OR HER FAMILY (BIOLOGICAL OR ADOPTIVE OR GUARDIANS) UP WITH AN APPROPRIATE TRANSITION PLAN (OUT OF JUVENILE COURT AND/OR FOSTER CARE)
	ENSURE YOU KNOW AND FOLLOW THE STATE AND FEDERAL LAWS THROUGHOUT THE PROCEEDING

Appointment Statute and Role P2-3.01.00

In delinquency proceedings, your role in Wyoming changes to that of a pure best interest attorney. This is because a child in this proceeding has a right to an attorney who provides direct representation. Wyoming Statutes Section 14-6-222(a) set forth the right to counsel for all children in delinquency proceedings. Rule 5(A) of the Wyoming Rules of Procedure for Juvenile Courts also states: "The Respondent is entitled to be represented in all proceedings in Juvenile Court by counsel retained by him, his parent, or by counsel appointed pursuant to this Rule." The child may have two attorneys, one direct attorney and one best interest GAL. Wyoming Statutes Section 14-6-216 states: "The Court shall appoint a guardian ad litem for a child who is a party to the proceedings under this act if the child has no parent, guardian or custodian appearing in his behalf or if the interests of the parents, guardian or custodian are adverse to the best interest of the child."

Part of your role as a best interest attorney in a delinquency proceedings is to ensure that the child understands this right to a direct attorney, and is appointed or hires a direct attorney if the child so wishes, as their representation and protection of their rights is essential. In a delinquency proceeding, if the child qualifies financially, a public defender (PD) can be appointed to represent the child pursuant to Wyoming Statutes Section 7-6-112(a)(i). If the child declines counsel, you should be cognizant of the fact that the child may later in the proceedings still require direct representation and may need to take steps to ensure that counsel is provided. You should make contact with the PD prior to talking with the dually represented client.

In order for a GAL to be appointed in a delinquency proceeding the court or a party to the action (district or county attorney or parent's attorney) must request it and the court must find that the parents are gone or the parents' interests are adverse to the child's. You cannot ask the court to appoint you because you would not be a party to the case before being appointed.

RIGHT TO COUNSEL – IN RE GAULT *P2-3.01.01*

The right to counsel for children in delinquency proceedings also comes from federal case laws, specifically *In Re Gault* in 1967. This case held that juveniles, when facing a loss of liberty, had the same due process rights as adults under the Fourteenth Amendment of the Constitution. This includes the right to counsel.

How a Delinquency Case Gets To Juvenile Court *P2-3.02.00*

A Delinquency Case is opened one of two ways. One, the county/district attorney files a petition with Juvenile Court based off a citation for an offense. Depending on whether the citation is for a misdemeanor or a felony, who issued the citation, the discretion of the district/county attorney, and the single point of entry process, will determine which Court your client's case is heard in. Just be aware that these citations are not always heard in Juvenile Court.

The second way a juvenile delinquency case begins is that temporary custody can be taken by law enforcement if:

- Circumstances would permit an arrest without warrant under Wyoming Statutes Section 7-2-102;
- Reasonable grounds to believe the child has violated the terms of a Juvenile Court order; or
- The child's conduct seriously endangers himself or the person or property of others.⁹⁰

Once a child is taken into detention, the parent must be notified as soon as possible.⁹¹ The child shall be interviewed by DFS within 24 hours, excluding weekends and legal holidays, after the child is taken into custody. DFS shall submit a written report of the interview to the Court, including an assessment of the immediate needs of the child and a recommendation for the most appropriate placement for the child pending Court disposition or execution of a Court order for placement or commitment.⁹² A delinquent child also must be detained in a separate detention center from adults⁹³ and released and not held in detention unless it is authorized by Court order or required to:

- Protect the person or property of others;
- Prevent the child from absconding or being removed from the jurisdiction of the Court; or
- Provide supervision for a child "having no parent, guardian, custodian, or other responsible adult."⁹⁴

Court Proceeding, Statutes, and Hearings *P2-3.03.00*DETENTION HEARING *P2-3.03.01*

The shelter care hearing must be held within 48 hours, excluding weekends and holidays, of protective custody being taken.⁹⁵ The purpose of this hearing is to determine if further detention is required pending further Court action.⁹⁶ The Court can order

⁹⁰ WYOMING STAT. ANN. § 14-6-205.

⁹¹ WYOMING STAT. ANN. § 14-6-206.

⁹² WYOMING STAT. ANN. § 14-6-209(A).

⁹³ WYOMING STAT. ANN. § 14-6-207.

⁹⁴ WYOMING STAT. ANN. § 14-6-206.

⁹⁵ WYOMING STAT. ANN. § 14-6-209(A).

continued detention/shelter care if “returning the child to the home is contrary to the welfare of the child.”⁹⁷

At the shelter care hearing, the Court is also required to advise the child of:

- The contents of the petition;
- The allegations;
- Right to counsel;
- A copy of the allegations;
- Confront and cross-examine adverse witnesses;
- Introduce evidence and present witnesses on his/her own behalf;
- Use of the Court’s subpoena power to compel witnesses to testify or produce evidence;
- Trial by jury if timely demanded (within 10 days of the advisement at the initial hearing);
- Right to remain silent;
- Privilege against self-incrimination; and,
- Right to appeal.⁹⁸

If the Court orders the child’s release, the Court can place restrictions on child’s travel, associates, activities, or place of abode before adjudication.⁹⁹ All relevant and material evidence helpful to the Court in determining whether shelter care is necessary is admissible, even if it would not be competent in an adjudicatory hearing.¹⁰⁰

INITIAL HEARING *P2-3.03.02*

At the initial hearing, the Court must advise the parties of the following:

- Their rights under the law;
- The specific allegations in the petition; and
- That they may be liable for costs of service and treatment.

The purpose of the initial hearing is to give the respondent the opportunity to admit or deny the allegations in the petition.¹⁰¹ If the respondent admits the allegations, the Court adjudicates the child delinquent and proceeds. If the respondent denies the allegations, the Court sets an adjudication hearing within 60 days or, at the latest, within 90 days of the date the petition was filed.¹⁰² The shelter and initial hearings can also be held together. You can also have a consent decree or stipulation.

ADJUDICATORY HEARING *P2-3.03.03*

The adjudicatory hearing is the trial on the allegations contained in the petition. The adjudicatory hearing can be to the bench or to a jury. The state has the burden to prove the allegations beyond a reasonable doubt.¹⁰³ Only competent, relevant, and material evidence is admissible at the adjudicatory hearing.¹⁰⁴ If a party wants a jury trial, they must request it within 10 days of the initial hearing. This hearing must be set within 60 days or for good cause can be set

⁹⁶ WYOMING STAT. ANN. § 14-6-209(A).

⁹⁷ WYOMING STAT. ANN. § 14-6-209(D).

⁹⁸ WYOMING STAT. ANN. § 14-6-209(B), 14-6-222, AND 14-6-223.

⁹⁹ WYOMING STAT. ANN. § 14-6-209(D).

¹⁰⁰ WYOMING STAT. ANN. § 14-6-209(E).

¹⁰¹ WYOMING STAT. ANN. § 14-6-226.

¹⁰² WYOMING STAT. ANN. § 14-6-226(B).

¹⁰³ WYOMING STAT. ANN. § 14-6-226(A).

¹⁰⁴ WYOMING STAT. ANN. § 14-6-226(B).

within 90 days.

CONSENT DECREE *P2-3.03.04*

If all parties agree, the Court can enter a consent decree, which gives the Court jurisdiction over the parties and the child.¹⁰⁵ The adjudication of the case is held in abeyance while the child works his or her case plan. If the child does what is required of them pursuant to the case plan, the case will be dismissed without an adjudication. If the child fails to work the case plan, the proceedings can be reinstated.¹⁰⁶ The consent decree remains in effect for no longer than one (1) year if all parties agree.¹⁰⁷ The DA/CA, child's legal representative, and the child must all agree in order for a consent decree to be entered.¹⁰⁸ It must be in writing and include the case plan.¹⁰⁹

DISPOSITION HEARING *P2-3.03.05*

The disposition hearing can be held immediately after adjudication/admission or within 60 days of the adjudicatory hearing.¹¹⁰ The Court must consider the predisposition report, multidisciplinary team report, case plan, and any other reports or evaluations provided. If the Court orders a disposition different than the recommendation of the predisposition report or multidisciplinary team report, it must make specific findings of fact relied on to support that decision.¹¹¹

The Court shall not order an out-of-state (OOS) placement unless:

- Evidence has been presented to the Court regarding costs of OOS and in-state (IS) placement and whether or not an IS facility is available or currently available;
- Affirmative finding on record that no placement in IS can provide adequate treatment or services for the child; AND
- Court states on record why no IS placement is available.¹¹²

If the Court orders placement of a child at a psychiatric residential treatment facility, the order cannot state the specific facility or level of care.¹¹³ The dispositional order is in effect indefinitely.¹¹⁴ All disposition orders must terminate upon the child turning 21.¹¹⁵

REVIEW HEARINGS *P2-3.03.06*

If the child is placed in out-of-home placement, the Court must conduct review hearings every six (6) months.¹¹⁶ At the review hearing, the Court must determine the following:

- Appropriateness of placement;
- Reasonable efforts to reunify;
- Safety of the child;
- Permanency plan for the child.¹¹⁷

¹⁰⁵ WYOMING STAT. ANN. § 14-6-228.

¹⁰⁶ WYOMING STAT. ANN. § 14-6-228.

¹⁰⁷ WYOMING STAT. ANN. § 14-3-228(c).

¹⁰⁸ WYOMING STAT. ANN. § 14-6-228(A).

¹⁰⁹ WYOMING STAT. ANN. § 14-6-228(B).

¹¹⁰ WYOMING STAT. ANN. § 14-6-226(c).

¹¹¹ WYOMING STAT. ANN. § 14-6-226(A)(ii).

¹¹² WYOMING STAT. ANN. § 14-6-429(A)(v).

¹¹³ WYOMING STAT. ANN. § 14-6-229(E)(v).

¹¹⁴ WYOMING STAT. ANN. § 14-6-231(B).

¹¹⁵ WYOMING STAT. ANN. § 14-6-231(C).

¹¹⁶ WYOMING STAT. ANN. § 14-6-229(E)(ii)(B).

Permanency for your delinquent client is just as important as a client in an abuse or neglect proceeding. Therefore, it is important to plan for this just as you would in other Juvenile Court proceedings. This includes asking for a change in permanency plan if needed, and TPR if appropriate.

PARENTS AND GUARDIANS *P2-3.03.07*

Parents and guardians must be present at Court hearings in delinquency proceedings. If they don't attend, they are liable for contempt of Court and Court may issue a bench warrant.¹¹⁸

TRANSFER TO AND FROM JUVENILE COURT - JURISDICTION *P2-3.03.08*

Wyoming Statutes Section 14-6-203 covers jurisdiction for delinquency proceedings and Juvenile Court, in case this is an issue in your case. If so, please bring it to the attention of your client's public defender. Wyoming Statutes Section 14-6-237 covers transfers from and to Juvenile Court. Again, if you believe this may be in your client's best interests, let your client's public defender know. If there is no public defender, you can bring this issue to the attention of the judge and this would be an appropriate time to ask for a public defender again.

NEED MORE?

In Re Gault, 387 U.S. 1 (1967).
Burman, *Justice For Children*, Section 9.0.

[*Return to Checklist*](#)

Section Four: Interstate Compact on Juveniles Proceeding

P2-4.00.00

<input type="checkbox"/>	REVIEW THE APPOINTMENT ORDER
<input type="checkbox"/>	CLEARLY UNDERSTAND YOUR ROLE
<input type="checkbox"/>	MEET YOUR CLIENT
<input type="checkbox"/>	REVIEW AND REQUEST DISCOVERY
<input type="checkbox"/>	REVIEW THE CASE FILE AND RECORDS
<input type="checkbox"/>	TALK TO THE DFS WORKER
<input type="checkbox"/>	INDEPENDENTLY INVESTIGATE THE CASE (MAY INCLUDE TALKING TO FAMILY, PROVIDERS, REVIEWING RECORDS, OBSERVING VISITATIONS, ETC.)
<input type="checkbox"/>	CONTINUE TO MEET WITH YOUR CLIENT (REGARDLESS OF AGE OR PLACEMENT LOCATION)
<input type="checkbox"/>	DEVELOP A THEORY OF THE CASE
<input type="checkbox"/>	DETERMINE THE CLIENT'S BEST INTERESTS

¹¹⁷ WYOMING STAT. ANN. § 14-6-429(E)(ii)(B).

¹¹⁸ WYOMING STAT. ANN. § 14-6-215.

<input type="checkbox"/>	ATTEND ALL COURT HEARINGS
<input type="checkbox"/>	USE LITIGATION TOOLS AT THE HEARINGS
<input type="checkbox"/>	DO WHAT IS NECESSARY AND REASONABLE TO REPRESENT YOUR CLIENT'S BEST INTERESTS
<input type="checkbox"/>	ADVOCATE FOR TIMELY RETURN TO HOME STATE
<input type="checkbox"/>	SET YOUR CLIENT AND HIS OR HER FAMILY (BIOLOGICAL OR ADOPTIVE OR GUARDIANS) UP WITH AN APPROPRIATE TRANSITION PLAN (TO THE HOME STATE)
<input type="checkbox"/>	ENSURE YOU KNOW AND FOLLOW THE STATE AND FEDERAL LAWS THROUGHOUT THE PROCEEDING

Appointment Statute and Role *P2-4.01.00*

GALs from the GAL Program were historically unable to be appointed in Interstate Compact on Juveniles (ICJ) proceedings, until the statute was changed in the 2013 Legislative Session. GALs can now be appointed to represent children in ICJ cases. In ICJ proceedings, your role in Wyoming is to represent clients in the hybrid role. This means that you must represent the child's wishes and the child's best interest at the same time. The majority of the time, if you counsel the child appropriately and effectively, the child's wishes and the child's best interest will align.

LAWS AND HEARINGS *P2-4.01.01*

The ICJ is an interstate agreement that Wyoming has entered into by agreeing to the contract and adopting the law and rules. This contract deals with children who have left their home state and assists in the multi-state communications to return the youth. The applicable situations are youth:

- Who have run away from home and left their state of residence;
- Who are on probation, parole or under supervision, and have escaped to another state;
- Who have been accused of an offense in another state;
- Are in need of institutionalization or special services in another state; and
- Offenders who have been released into the community and who wish to relocate to another state.

Your involvement in these cases is short, as these proceedings are quick and have a very small scope. There are only a few situations in which a hearing can be held before the child is returned to his or her home state: if the child is being held, if the child is agree to return, and if the child is refuse to return. These are the three hearings that are possible in this type of proceeding. Your job is to meet with your client and attend these hearings to represent his or her best interests and wishes in the attempt to return the child home.

RULES *P2-4.01.02*

The details of ICJ cases are primarily governed by rules and policies. There are ICJ Rules nationally, as well as state rules and policies. You should review these and have a basic understanding of them in order to represent your client. The national rules, a benchbook, and many resources in this area of law can be found at <http://www.juvenilecompact.org>. The DFS policies can be found at <http://dfsweb.wyo.gov/social-services/interstate-compact-on-juveniles>.

NEED MORE?

Wyoming Statutes Title 14, Chapter 6, Article 1.

Juvenile Compact, *Interstate Compact for Juveniles*, Article I, *available at* <http://www.juvenilecompact.org/LinkClick.aspx?fileticket=MvTpL5EP7Do%3d&tabid=684&mid=2046>.

Juvenile Compact, *ICJ Rules*, *available at* <http://www.juvenilecompact.org/>.

Department of Family Services, *Interstate Compact on Juveniles*, *available at* <http://dfsweb.wyo.gov/social-services/interstate-compact-on-juveniles>.

[*Return to Checklist*](#)

Part Three: Topical Areas Applicable to All Proceedings

Section One: Litigation P3-1.00.00

- ☐ **DEVELOP A THEORY OF THE CASE**
The first step is to investigate the facts of the case, then develop your client's case for trial and hearings.
- ☐ **USE ALL OF THE TOOLS IN THE LITIGATION TOOLBOX**
Use discovery, motions, experts, and potentially a jury to zealously represent your client.
- ☐ **USE YOUR TRIAL ADVOCACY SKILLS**
Use the art of trial advocacy and constantly develop this skill for use in the Courtroom.
- ☐ **USE CAUTION WITH CHILD-WITNESSES**
Understand suggestibility, competency to testify, preparing children to testify, and hearsay exceptions for child witnesses.

Although the Juvenile Court System is somewhat informal and much of the successes can be obtained by working with the other parties collaboratively, you must remember that at its core, Juvenile Court is Court. Therefore, it is necessary for you to be an expert in litigation skills.

Constant case analysis is important due to the complexities, fluctuating factual basis, and potentially subjective nature of child welfare cases, including your own implicit biases. Your first job is to independently investigate the facts. Second, develop a theory of the case. To do this, look at the following:

- Determine child's position;
- Permanency goal;
- State of litigation;
- Grounds for abuse or neglect;
- Individual child's characteristics;
- Child's safety and well-being; and
- Investigation of other relevant facts.

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Discovery P3-1.01.00

The discovery rules in the Rules of Juvenile Procedure allow you to request discovery and also require you to respond to discovery requests. Do not forget the provisions mentioned in Part One.

Motions Practice P3-1.02.00

Your second tool in the litigation toolbox is filing motions with the Court. The GAL Program has a Motions Bank that can assist you with

some of the more basic motions, but it is essential to be comfortable using this litigation tool outside of the motions bank. For example, if you have requested a service be provided to your client and it wasn't approved by DFS, you can motion the Court to order that service be provided. Some possible motions include motion for visitation, motion to change the permanency plan, motion for provision of services, motion for access to confidential records, motion to compel, etc. Do not abuse this tool, but if it is necessary for your client's success and in his best interests, use this litigation tool.

Juries *P3-1.03.00*

You must be familiar with jury trials, as any party can request a jury in Juvenile Court, including you, if you think this is necessary for the case. Understanding the differences in litigation skills, from a bench trial to a jury trial, is essential. Experience with voir dire, jury selection, and persuasion of juries is important, especially since the number of jury trials in Wyoming's Juvenile Courts are increasing. There are also model jury instructions for Juvenile Court and TPRs available for you to use.

Experts *P3-1.04.00*

If you need an expert to zealously advocate for your client, request one from the GAL Program. There are funds available for this litigation tool. Costs for services or treatments provided by an expert are appropriately paid by DFS. But, if the expert is used to prove an element or part of your case at trial or at a hearing, it is a litigation tool, and appropriately requested through the GAL Program. If the request is reasonable, necessary for the case, and there are funds available, it will be approved. Be aware of your ethical duties to provide an expert that is reasonably necessary in the case, even if it is denied by the GAL Program. For information on this, see pages 72-74 in Burman's book, *Justice for Children*.

- Be sure the witness possess sufficient knowledge, skill, experience, training, or education in order to qualify (deficiencies can go to weight of the testimony, unless clearly not qualified);
- Develop your bases for opinion on a broad range of facts and data; this information should precede the expert's opinion.

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Trial Advocacy *P3-1.05.00*

Remember that trials are stories, and they should be persuasive for the judge or the jury. Take time to prepare your story, including the theory, theme, and frame. Zealous and effective trial advocacy is an art that is developed over time. There are trainings and resources available to help you develop this skill. The most applicable assistance is a book written by Marvin Ventrell, titled "*Trial Advocacy for the Child Welfare Lawyer: Telling the Story of the Family*." Topics to focus on in this skill area that are covered in Mr. Ventrell's book:

- Case Analysis;
- Opening and Closing;
- Direct;
- Cross;
- Witnesses and Exhibits;
- Evidentiary Foundation;

- Impeachment;
- Telling the Story;
- Dealing with Difficult Witnesses;
- Making and Meeting Objections;
- Preserving the Record for Appeal; and
- Integrity in the Courtroom.

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Child Testimony in Court P3-1.06.00

You should be familiar with the suggestibility literature that revolves around age (particularly under age 6), questioning by authority figures, the effects that interviews have on children, and details and participants. If you are aware of this literature and research, you will know when to question reports of child testimony or interviewing and when to seek expert review.

There are basic competency issues for children who testify in Court. “To testify, a child must possess capacity to observe, sufficient intelligence, adequate memory, ability to communicate, awareness of the difference between truth and falsehood, and an appreciation of the obligation to tell the truth in Court.”¹¹⁹

There is research into the effects on children of testifying in Court. This is something often raised by attorneys, yet no agreement has been reached as to whether the effect of testimony is positive or negative. Importantly, you must consult with mental health professionals in making this determination. You must also ensure that the child has support and is prepared to testify. This may mean taking them to the Courtroom when it’s empty to let them see it, showing them where certain people will sit, and allowing them to sit in the witness stand. This will usually ease some concerns for the child.

The hearsay exceptions can be especially important for a child’s out-of-Court statements because they are often powerful evidence of abuse or neglect, and some children are ineffective witnesses or cannot take the stand at all. Some exceptions that could be used are: prior inconsistent statements, prior consistent statements, charge of fabrication, impeachment by contradiction, impeachment by evidence of untruthful character, impeachment with prior inconsistent statements, impeachment charging lapse of memory, present sense impressions, excited utterances, fresh complaint of rape or sexual abuse, diagnosis or treatment exception, and residual and child hearsay exceptions.

Syndrome Evidence P3-1.07.00

Syndrome evidence is defined as either diagnostic or non-diagnostic. When it is not possible to reason backward from symptoms to etiology, the syndrome lacks diagnostic value, and is non-diagnostic. Nearly all psychological syndromes are non-diagnostic. When a new syndrome or a syndrome of questionable reliability comes up, a Frye or Daubert hearing should be used to test the validity and reliability of the syndrome. This is important for you to know if you are going into an adjudicatory hearing or permanency hearing that is contested and syndrome evidence is being used. You will want to know what is and what is not reliable.

¹¹⁹ VENTRELL, TRIAL ADVOCACY FOR THE CHILD WELFARE LAWYER: TELLING THE STORY OF THE FAMILY (2001).
DUQUETTE AND HARALAMBIE, CHILD WELFARE AND LAW AND PRACTICE, SECOND EDITION, Chapters 30-33.

Types of Syndromes that often come in child welfare:

- Battered Child Syndrome (usually under age of 3) – used often; is not novel scientific evidence, and is not subject to Frye or Daubert;
- Battering Parent Syndrome – Courts usually reject this evidence;
- Munchausen Syndrome by Proxy – Courts have held that this passes muster or is not subject to analysis under Frye or Daubert;
- Shaken Baby Syndrome – accepted medical diagnosis, not novel, not subject to Frye or Daubert;
- Post Traumatic Stress Disorder – in Diagnostic and Statistical Manual (DSM)-IV-TR; diagnosis does not necessarily prove trauma, little probative value as substantive evidence of trauma;
- Child Sexual Abuse Accommodation Syndrome – not to be used as substantive evidence, admissible only to rehabilitate a child's credibility following impeachment focused on delayed reporting, inconsistency, or recantation;
- Parental Alienation Syndrome (PAS) – non-diagnostic, any use of PAS for diagnostic purposes is a misuse of the syndrome that does not pass muster under Frye or Daubert. It also has been criticized, as the American Psychiatric Association said there is no data to support this syndrome. If it is brought up in one of your cases, be sure to challenge it, as it should not be used.

[NEED MORE?](#)

Wyoming GAL Program Motions Bank, available at <http://gal.wyo.gov>.

Pattern Jury Instructions.

Burman, *Justice for Children*, p. 72-74.

Ventrell, *Trial Advocacy for the Child Welfare Lawyer: Telling the Story of the Family* (2001).

Duquette and Haralambie, *Child Welfare and Law and Practice*, Second Edition, Chapters 30-33.

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Section Two: Child Development *P3-2.00.00*



UNDERSTAND ATTACHMENT AND BONDING FOR YOUR CLIENTS

You must have a basic understanding of the key elements needed for attachment bonding and building healthy relationships in order to see potential issues, and to make determinations of best interests.



USE APPROPRIATE DEVELOPMENTAL CHECKLISTS TO RAISE RED FLAGS

Understand the basics of child development and what to look for during the early years in order to ask for a professional review or intervention.

Attachment and Bonding P3-2.01.00

As humans, we create many kinds of bonds between one another. Infant attachment is a special bond characterized by the unique qualities, which unite mother and infant, or primary caregiver and infant.

KEY ELEMENTS OF ATTACHMENT BONDING *P3-2.01.01*

- An attachment bond is an enduring emotional relationship with a specific person;

- The relationship brings safety, comfort, soothing, and pleasure; and
- Loss or threat of loss of the person evokes intense distress.

A solid and healthy attachment with a primary caregiver appears to be associated with healthy relationships, while poor attachment with the mother or primary caregiver appears to be associated with a host of emotional and behavioral problems later in life. This early relationship is not founded on quality of care, but on the nonverbal emotional communication between child and caregiver, known as the attachment bond.

Moving a child from his or her home to foster home, moving to multiple foster homes, and the trauma of abuse and neglect at a young age can all cause attachment and bonding issues. These are issues to look for in your clients and seek professional assessments or help if needed. Also, it is important that you keep this in mind when you have a client of a young age and are discussing or contemplating moving the young client to foster care or to a new foster home. Bring this issue up with the client's mental health professional and get guidance from them on how to assist clients with unhealthy attachments so you can advocate for these services and assistance in Court.

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Development Checklists and Things to Look For PS-2.02.00

The Wyoming Early Learning Guidelines (ELG) provides a common set of guidelines for development and learning in infants and toddlers, and offers education on how to support high quality environments. They are general guidelines; it is important to remember that each child is a unique individual, and each caregiver's roadmap may differ to best suit a child's needs.

You can use these guidelines to come to a basic understanding of child development. There are areas to look for that may raise red flags and cause you to refer to a professional for an assessment or treatment.

The table below outlines physical milestones and what to look for with young children.

Turning	4-6 months
Reaching for Objects	4-6 months
Un-aided Sitting	5-8 months
Crawling, Scooting	6-12 months
Climbing (up to 6 inches)	8-10 months
Walking While Holding Onto Support	9-15 months
Climbing (Up to 12 inches)	11-12 months
Un-aided Walking	9-15 months
Un-aided Stair Climbing	25-30 months
Ability To Turn Door Knob	25-30 months
Ability to Remove Jar Lids	25-30 months
Anal Sphincter Muscles in Control	31-36 months

[NEED MORE?](#)

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 4.
 Wyoming Quality Counts, *A Child's Development*, available at www.wyqualitycounts.org/About/a-childrens-development.html.
 The Child Trauma Academy, *Consequences of Emotional Neglect in Childhood*, available at http://aia.berkeley.edu/strengthening_connections/handouts/perry/Bonding%20and%20Attachment.pdf.

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Section Three: Mental Health and Substance Abuse *P3-*

3.00.00

- ☐ **SUPPORT CLIENTS WITH BEHAVIORAL HEALTH NEEDS**
Understand how to support children who currently have, or have had, potential mental health and substance abuse issues.
- ☐ **KNOW THE PLACEMENT OPTIONS FOR CLIENTS WITH BEHAVIORAL HEALTH NEEDS**
Understand placement options and alternatives, including home and community-based resources available for children with mental health and substance abuse issues.
- ☐ **KNOW THE SERVICES AVAILABLE FOR CLIENTS WITH BEHAVIORAL HEALTH NEEDS**
Be aware of services available in Wyoming for children with mental health and substance abuse issues.
- ☐ **ENSURE CHINS CLIENTS WERE APPROPRIATELY DIVERTED BEFORE PETITION WAS FILED**
Be able to reference appropriate Wyoming statutes for CHINS with potential mental health and substance abuse disorders.

Mental Health Issue or Disorder P3-3.01.00

The important thing for you to understand is when to ensure your client is screened for mental health or substance abuse disorders and a general idea of the services available to your clients. You do not need to be an expert in this area, but rather, be familiar with the concepts so you can advocate for your clients. This section addresses children or youth who currently have, or at any time during the last year, had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the current *Diagnostic and Statistical Manual* (DSM). For children, this includes pronounced emotional or behavioral symptoms including, but not limited to, severe withdrawal and symptoms of attachment disorder, autism, and aggressive behavior in more than one setting.

BACKGROUND *P3-3.01.01*

More children in Juvenile Court have these issues than are usually diagnosed, so if there is any question, be sure your client is screened. "4.5 to 6.3 million children and youth in the U.S. suffer from a serious emotional disturbance. 65% to 80% of these children and youth do not receive the specialty mental health services and supports they need."¹²⁰ In too many cases, experiences inside the system only exacerbate these problems or contribute to new ones. Foster care increases the likelihood of psychiatric

120 SAMHSA Request for Applications, http://www.samhsa.gov/grants/2011/sm_11_008.aspx.

impairment, personality disorders and pervasive social dysfunction in adulthood. Children can be moved from one placement to another, which can create or exacerbate attachment problems.

Of the 4.5 to 6.3 million children who suffer from serious emotional disturbance, an estimated 70% are involved in the Juvenile Court System. Several examples are listed below:

- Experts estimate at least 80% of children in Juvenile Court have a diagnosable mental health disorder.
- At least one in five has a serious emotional disturbance.
- At least 50% have co-occurring substance abuse disorders.
- There is a powerful correlation between youth victimization and subsequent mental health problems. For example, nearly 30% of boys who experienced sexual assault developed PTSD.
- There is victimization even in CHINS and delinquency cases; researchers estimate over 25% of these children have been abused.¹²¹

Substance Abuse PS3.02.00

A program shall utilize the current version of the DSM (DSM-IV-TR), completing a five-axis differential diagnosis of the client. A program serving adolescents shall utilize an assessment tool at a minimum, which includes the following domains:

- Medical;
- Criminal;
- Substance use;
- Family;
- Psychiatric;
- Developmental;
- Academic and intellectual capacity;
- Physical and sexual abuse; and
- Peer, environmental cultural history, including assessment and suicidal and homicidal ideation.

Treatment services are based on the Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Improvement Protocol 44 (TIP) Series publication, "Treatment of the Criminal Justice Client."

Mental Health and Substance Abuse Issues – Best Practices PS3.03.00

A best practice for mental health issues is to reduce restrictive placements. This prevents the need for high-cost (monetary and mental health consequences) residential treatment, foster care or juvenile detention. Recommended services are based on SAMHSA Treatment Improvement Protocol 44 (TIP) Series publication, "Treatment of the Criminal Justice Client." SAMHSA's National Registry of Evidence-based Practices can be found through the following link: <http://www.nrepp.samhsa.gov>.

You should routinely review a client's mental health records and treatment plans to ensure the client is receiving appropriate/medically necessary services and medications. If you suspect a child may be receiving a psychotropic medication at too young of an age, too much of a type of psychotropic, or too many different psychotropic medications, you should request a review of the medication regime. You should work

121 Mears and Aron, Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge (2003).

with the caseworker or a representative from the Department of Health (WDH) to request a formal review of the medication.

Mental Health and Substance Abuse Resources in Wyoming P3-3.04.00

There are several mental health and mental health resources in Wyoming for children, including the following:

- Medicaid;
- Wrap-Around Services;
- Medicaid Children’s Mental Health Waiver;
- UPLIFT;
- Care Management Entity (CME);
- Community Mental Health and Substance Abuse Centers (CMHSACs);
- Family Treatment Courts (Wyoming Statute Section 7-13-1601-1615);
- DFS contracts with child care facilities and substitute care providers (Wyoming Statute Section 14-4-101); and
- Psychiatric Residential Treatment Facilities (PRTFs).

See the DFS Resource Guide for more information: <http://dfsweb.state.wy.us/about-us/publications.html>.

PLACEMENT OF LAST RESORT P3-3.04.01

To ensure availability of Medicaid funds for the services provided in PRTFs the State Medicaid Agency must assure federal requirements for certification of the medical services are met for each child. The child must have a psychiatric evaluation (conducted by a physician or psychiatrist) prior to placement. You may have to advocate for your client to ensure these things are done.

If your client is in a PRTF, Residential Treatment Center (RTC), group home, day treatment or detention facility placement, check to make sure the placement is:

- Adequate (basic needs being met);
- Least restrictive;
- Least expensive;
- Educationally appropriate (Wyoming Statute Section 21-13-315(e));
- Treatment is being provided;
- Child is not overly medicated; and
- Ensure proper discharge planning is conducted prior to transition back into the community.

You may arrange for a client to have a telehealth psychiatric evaluation through the local DFS office or by contacting WDH. You should ensure that Court orders placing a child at a PRTF comply with W.S. 14-3-429(c)(iv), W.S. 14-6-229(e)(v) or 14-6-429(c)(iv), which directs that “any order regarding potential placement at a psychiatric residential treatment facility shall not specify a particular psychiatric residential treatment facility or level of care of the placement of the child.”

You should also ensure that appropriate transition planning is done prior to discharge, including the filing of motions to ensure community services are in place prior to discharge. You can utilize tools like “Re-entry Team Meetings” or requiring a facility to provide the Court with a transition plan prior to discharge to ensure this is done.

OUT OF STATE (OOS) PLACEMENTS *P3-3.04.02*

You may have to draft the motion and order for an OOS placement, to ensure it has the correct findings. According to Wyoming Statute Section 21-13-315, no Court shall order an OOS placement unless:

- Evidence has been presented to the Court regarding the costs of the OOS placement being ordered together with evidence of the comparative costs of any suitable alternative in-state (IS) treatment program or facility, as determined by DFS pursuant to paragraph (d)(vii) of this section, whether or not placement in the IS program or facility is currently available;
- The Court makes an affirmative finding on the record that no placement can be made in a IS institution or in a private residential treatment facility or group home located in Wyoming that can provide adequate treatment or services for the child; and
- The Court states on the record why no IS placement is available.

You should ensure that this information is in the record, motion, and/or order so the placement is not disrupted.

INFORMATION ON THE CHILDREN'S MENTAL HEALTH WAIVER *P3-3.04.03*

The Children's Mental Health Waiver is a WDH Medicaid program with a limited number of funding opportunities that, by using High Fidelity Wraparound, aims to help children of Wyoming reduce their level of service needs and increase their natural supports in a relatively short amount of time.

It provides individualized services and support based on unique strengths and needs of children and youth with serious emotional disturbances. It utilizes a team and goal oriented process for success.

When Wraparound and the Waiver is used successfully it can:

- Keep youth with serious emotional disturbances that need mental health treatment in their home communities with their parents/families involved in all aspect of their treatment thereby preventing custody relinquishment.
- Strengthens families' skills to support the physical, emotional, social and educational needs of their children.
- Reduces, and in some cases, prevents the length of psychiatric hospital stays.

It puts the youth and family in touch with community resources and support systems. It helps strengthen the family's skills to support the physical, emotional, social, and educational needs of their youth. Services are provided in the most comfortable and appropriate environments to keep the youth at home, in school, and in their community. The youth and family are the driving force in choosing team members and natural supports that know their family best.

The Children's Mental Health Waiver was developed and is managed by the WDH, Mental Health and Substance Abuse Services Division, with the ongoing input from parents, advocacy groups, child-serving agencies and key stakeholder.

WAIVER QUALIFICATIONS

- Children and youth between the ages of 4-20;
- Meet the definition of serious emotional disturbance;

- Meet at least one Medicaid criteria for inpatient psychiatric hospitalization;
- CASII composite score of 20-27 (between ages of 6-20);
- DSM Axis 1 or ICD diagnosis;
- Social and emotional assessment information or ECSII (ages 4 & 5); and
- Financially eligible for Medicaid based on youths own resources.

APPLICATION PROCESS

An application must be complete and both clinical and financial requirements must be met before the youth can be accepted into the Children's Mental Health Waiver program. Assistance in completing the application process is available through the Waiver program office.

NEED MORE?

Diagnostic and Statistical Manual (DSM)
Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Improvement Protocol 44 (TIP) Series publication,
Treatment of the Criminal Justice Client.
SAMHSA's National Registry of Evidence-base Practices, available at <http://www.nrepp.samhsa.gov/>.

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Section Four: Health Issues and Early Periodic Screening, Diagnosis, and Treatment P3-4.00.00



HAVE A BASIC UNDERSTANDING OF EARLY PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

Understand how to support children in the early screening and identification of potential health issues. Ensure your client has a primary care provider (PCP) or other medical provider that is following the guidelines of EPSDT.



ENSURE YOUR CLIENT HAS ACCESS TO MEDICAL CARE

Identify children requiring healthcare services and ensure children have received appropriate services. Identify next steps for seeking services for children requiring healthcare services and know potential referral sources.

Healthcare for children in the Juvenile Court system is essential for their well-being. You are not responsible for diagnosing or treating the client, but you are responsible for ensuring that DFS has arranged for appropriate medical care for your client. This includes applying for Medicaid coverage if the child does not already have access to health insurance and medical care. This also includes understanding what Early and Periodic Screening, Diagnostic and Treatment (EPSDT) is and why it is important to your client. Finally, if your client is on Medicaid, as most children in Juvenile Court are, it is important to know the basics of what this covers for your client's health care needs.

Early Periodic Screening, Diagnosis, and Treatment Services and Expectations for GAL P3-4.01.00

The EPSDT benefit provides comprehensive and preventive health care services for children under age 21 who are enrolled in Medicaid. EPSDT is key to ensuring that children and adolescents receive appropriate preventive, dental, mental health, and developmental, and specialty services. You should identify if children and youth being served have received the appropriate healthcare services to support children's best

interest. This may include ensuring the child is referred to the correct provider or is matched up to a PCP.

Early	Assessing and identifying problems early
Periodic	Checking children's health at periodic, age-appropriate intervals
Screening	Providing physical, mental, developmental, dental, hearing, vision, and other screening tests to detect potential problems
Diagnosis	Performing diagnostic tests to follow up when a risk is identified, and
Treatment	Control, correct or reduce health problems found.

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Health Services *P3-4.02.00*

The State of Wyoming is required to provide comprehensive services and furnish all Medicaid coverable, appropriate, and medically necessary services needed to correct and ameliorate health conditions, based on certain federal guidelines. EPSDT is made up of the following screening, diagnostic, and treatment services:

SCREENING SERVICES *P3-04.02.01*

- Comprehensive health and developmental history;
- Comprehensive unclothed physical exam;
- Appropriate immunizations (according to the Advisory Committee on Immunization Practices);
- Laboratory tests (including lead toxicity screening); and
- Health Education (anticipatory guidance including child development, healthy lifestyles, and accident and disease prevention).

VISION SERVICES *P3-04.02.02*

At a minimum, diagnosis and treatment for defects in vision, including eyeglasses. Vision services must be provided according to a distinct periodicity schedule developed by the state and at other intervals as medically necessary.

DENTAL SERVICES *P3-04.02.03*

At a minimum, dental services include relief of pain and infections, restoration of teeth, and maintenance of dental health. Dental services may not be limited to

emergency services. Each state is required to develop a dental periodicity schedule in consultation with recognized dental organizations involved in child health.

HEARING SERVICES P3-04.02.04

At a minimum, hearing services include diagnosis and treatment for defects in hearing, including hearing aids.

OTHER NECESSARY HEALTH CARE SERVICES P3-04.02.05

Wyoming is required to provide any additional health care services that are coverable under the federal Medicaid program and found to be medically necessary to treat, correct or reduce illnesses and conditions discovered regardless of whether the service is covered in a state's Medicaid plan. It is the responsibility of states to determine medical necessity on a case-by-case basis.

DIAGNOSTIC SERVICES P3-04.02.06

When a screening examination indicates the need for further evaluation of an individual's health, diagnostic services must be provided. Necessary referrals should be made without delay and there should be follow-up to ensure the enrollee receives a complete diagnostic evaluation. States should develop quality assurance procedures to assure that comprehensive care is provided.

TREATMENT P3-04.02.07

Necessary health care services must be made available for treatment of all physical and mental illnesses or conditions discovered by any screening and diagnostic procedures.

NEED MORE?

For more information on health services for Medicaid children and youth, refer to the Wyoming Department of Health website:
<http://www.health.wyo.gov/healthcarefin/equalitycare/index.html>.

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Section Five: Developmental Disability (DD) Issues and

Waivers P3-5.00.00



UNDERSTAND THE DEVELOPMENTAL DISABILITIES (DD) SCREENING PROCESS

Understand the screening process used to identify children with potential developmental disabilities (DD), so you'll be better able to refer your clients for services as needed.



UNDERSTAND FEDERAL AND STATE DISABILITY PROGRAMS AVAILABLE TO DISABLED CLIENTS

There are a variety of specialized federal and state disability programs that are available to serve your clients.

Youth in foster care have a higher rate of developmental disability (DD) than other children. DDs include the cognitive, emotional, or physical impairment, especially one related to abnormal sensory or motor development that appears in infancy or childhood, and involves a failure or delay in progressing through the normal developmental stages of childhood. The Foster Care Independence Act ensures independent living is accessible to foster care children and youth, including those with DDs. It is important when you represent children with DDs to understand the importance of early identification and intervention to improve outcomes as children with DDs carry an increased risk of less desirable outcomes. It is also important to note that these services and waivers are available for your clients as adults as well, as these supports can oftentimes be a reason a case does not close.

Screening *P3*5.01.00

If you suspect that a child or youth may have a DD, the child or youth should be assessed by a medical professional for the potential of a DD. However, preliminary screening should be done by a PCP, as part of the EPSDT services.

In order to be eligible for the DD waiver, a licensed psychologist must render an opinion in writing, specifically answering the referral question for clinical eligibility, by confirming or denying a diagnosis of mental retardation, IQ of 70 or below, or DD due to a related condition. The psychologist must be licensed to practice psychology by the Wyoming State Board of Psychology, or a similar agency in another state.

Once the psychological evaluation confirms that the person has a diagnosis of mental retardation or DD due to a related condition, the Behavioral Health Division will arrange for the ICAP evaluation to see if the individual meets the functional criteria for eligibility. If the psychological evaluation does not contain a written opinion statement confirming this diagnosis, the applicant will not be clinically eligible for the Adult or Children's DD waiver.

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Specialized Federal and State Disability Programs *P3*5.02.00

There are a number of specialized federal and state programs available to help your clients with disabilities gain access to needed assistance, including financial and medical resources. This section discusses Supplemental Security Income (SSI), a federally-administered program, and the Medicaid waivers offered by the WDH. As a GAL, your understanding of the programs available to your clients with disabilities will help you act in their best interest.

FEDERAL PROGRAM: SUPPLEMENTAL SECURITY INCOME (SSI) *P3*5.02.01

Supplemental Security Income (SSI) is a federally-administered program available to children with disabilities. The monthly cash payment provided under this program is used to meet the basic food, clothing, and shelter needs of aged, blind, and disabled people who have limited income. A child younger than 18 years can qualify for benefits through the Social Security Administration (SSA) if he or she:

- Meets the medical qualifications for disability; and
- Meets the income and resource qualifications.¹²²

A youth is considered disabled if he or she “has a medically determinable physical or mental impairment, resulting in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last no shorter than 12 months.”¹²³

Based on this definition, youth in foster care are of special concern. For all youth, the transition to adulthood is difficult. For youths in foster care, however, the already difficult transition to adulthood could be compounded by illness and homelessness if they do not receive needed assistance. For this reason, youths in foster care must be screened for eligibility for SSI before they age out of the system. Note that this screening is not required in every state.

STATE PROGRAMS: WAIVERS *P3-5.02.02*

There are two Medicaid waivers available for youths with disabilities. The first of these is the Child Development Disabilities Home and Community-Based Waiver (DD Waiver), offered by WDH. This waiver, administered by the Developmental Disabilities Division, allows eligible youths with developmental disabilities to receive services that are not typically covered under the Wyoming State Medicaid Plan. The waiver provides home and community-based care that allows children to stay in the local community rather than being institutionalized.

Children from birth to 20 years old are eligible for the DD Waiver if they have been diagnosed with mental retardation or a related condition. They must also meet the level of care for an intermediate care facility for individuals with mental retardation (ICF/MR).¹²⁴

The Children’s Mental Health Waiver is a WDH program that provides individualized services and support that is intended to keep youth with serious emotional disturbances, and who need mental health treatment, in their home communities.¹²⁵ Children age 4 to 20 can qualify for the Mental Health Waiver. In order to qualify, they must:

- Meet the definition of serious emotional disturbance;
- Meet at least one Medicaid criterion for inpatient psychiatric hospitalization;
- Have a Child and Adolescent Service Intensity Instrument (CASII) composite score of 20-27, for ages 6-20;
- Have a DSM Axis 1 or International Classification of Diseases (ICD) diagnosis;
- Have social and emotional assessment information or Early Childhood Service Intensity Instrument (ECSII), for ages 4 and 5; and
- Be financially eligible for Medicaid based on their own resources.¹²⁶

NEED MORE?

Federal Program: Supplemental Security Income:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 23.6.1.
Social Security Administration, *Benefits for Children with Disabilities*, available at <http://www.ssa.gov/pubs/EN-05-10026.pdf>.

State Programs: Waivers:

Wyoming Department of Health, *Child DD Waiver*, available at <http://health.wyo.gov/ddd/childwaiver/index.html>.
Wyoming Department of Health, *Children’s Mental Health Waiver*, available at <http://health.wyo.gov/ddd/Children%27sMentalHealthWaiver.html>.

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¹²² SOCIAL SECURITY ADMINISTRATION, *BENEFITS FOR CHILDREN WITH DISABILITIES* (2013), AVAILABLE AT [HTTP://WWW.SSA.GOV/PUBS/EN-05-10026.PDF](http://www.ssa.gov/pubs/EN-05-10026.pdf).

¹²³ DONALD N. DUQUETTE & ANN M. HARALAMBIE, *CHILD WELFARE LAW AND PRACTICE*, 494 (2010).

¹²⁴ WYOMING DEPARTMENT OF HEALTH, *CHILD DD WAIVER* (NOV. 25, 2013), AVAILABLE AT [HTTP://HEALTH.WYO.GOV/DDD/CHILDWAIVER/INDEX.HTML](http://health.wyo.gov/ddd/childwaiver/index.html).

¹²⁵ *Id.*

¹²⁶ *Id.*

Section Six: Education *P3-6.00.00*



UNDERSTAND THE IMPORTANCE OF EDUCATION AS A SOURCE OF STABILITY

Education creates a sense of permanency for children, but it is easy for them to lose that sense of comfort if measures are not taken to maintain it.



KNOW THE EDUCATION RESOURCES AVAILABLE TO YOUR CLIENTS

Know the educational resources available to your clients so you can advocate for their best interests, and ensure that they are able to access the services they need.

School Stability P3-6.01.00

The principles that guide your work as a GAL emphasize the importance of providing children with a feeling of permanency and stability. At school, children are able to engage in a routine, have access to trusted, familiar adults, and maintain relationships with peers. The classroom environment allows children to feel stable when other components of their lives may not be. Children may find a sense of familiarity, stability, and connection through their education.

Because of this, protecting education as a child's source of stability is important. For youth in foster care, maintaining this source of stability is especially challenging. Poor coordination between child welfare and school personnel can result in delays in enrollment when moving to a new school, ultimately resulting in time not spent in the classroom. When youth in foster care experience difficulties transferring their records, they are often required to repeat courses or grade levels.¹²⁷ Moving to a new school may also cause anxiety. All of these complications can result in these youth falling behind their peers and dropping out of school.¹²⁸

As a GAL, you will be called upon to advocate for the educational needs of your clients. The Legal Center for Foster Care and Education of the American Bar Association has published the *Blueprint for Change: Education Success for Children in Foster Care*, outlining a series of eight goals that, when met, will ensure that a child is receiving positive educational outcomes. The goals are listed below:

Goal 1: Youth are entitled to remain in their same school if in their best interest.

Goal 2: Youth have seamless transitions between schools.

Goal 3: Young children enter school ready to learn.

Goal 4: Youth have the support to fully participate in school.

Goal 5: Youth have support to prevent school dropout, truancy, and disciplinary actions.

Goal 6: Youth are involved and empowered.

Goal 7: Youth have education advocates and decision makers.

Goal 8: Youth have support to enter into and complete postsecondary education.¹²⁹

For additional details on these goals, refer to the *Blueprint for Change* in its entirety, located at:

¹²⁷ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 457 (2010).

¹²⁸ *Id.*

¹²⁹ AMERICAN BAR ASSOCIATION, LEGAL CENTER FOR FOSTER CARE AND EDUCATION, *BLUEPRINT FOR CHANGE* (2013), AVAILABLE AT [HTTP://WWW.FOSTERCAREANDEDUCATION.ORG/AREASOFFOCUS/BLEUPRINTFORCHANGE.ASPX](http://www.fostercareandeducation.org/areasoffocus/blueprintforchange.aspx).

http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/education/blueprint_second_edition_final.authcheckdam.pdf.

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Individuals with Disabilities Education Act (IDEA) P3-6.02.00

For children with special needs, the Individuals with Disabilities Education Act (IDEA) provides access to important services, including early intervention and special education. The goal of IDEA is to allow children to be educated in the least restrictive environment possible. Under IDEA, children are evaluated to determine whether they have a disability that would warrant specialized instruction and, if so, the services required. If the child has a qualifying disability, individualized education plans (IEPs) are created jointly between educators and parents or guardians. Included in the IEP are the child's current educational and functional levels, type and amount of required services, goals for the school year, how goals should be measured, resources required to meet those goals, and the amount of time instruction will occur in a standard classroom setting.¹³⁰

When it is complete, the IEP serves as the agreement between the school district and the family that specifies the services the child will receive, start and end dates, and the duration and frequency of each service.¹³¹

IEP Checklists P3-6.03.00

Resources are available to aid in the development of IEPs. The National Center for Learning Disabilities recommends working through an IEP checklist before meeting with the school.¹³² The National Center for Learning Disabilities also provides a number of other educational checklists that may be of use.

Dispute Resolution and Enforcement P3-6.04.00

In the event of an IDEA dispute between the school district and the family, there are three options for resolution.

- Mediation;
- Due process hearing; or
- Complaint to State Department of Education.

For additional assistance, the Wyoming Protection & Advocacy System, Inc. is a non-profit corporation tasked with implementing mandates of federal laws related to the rights of persons with disabilities.¹³³ The organization's mission is "to establish, expand, protect and enforce the human and civil rights of persons with disabilities through administrative, legal, and other appropriate remedies." In your work as a GAL, you may need support or information from this group, especially as it pertains to dispute resolution and enforcement of federal laws. Their website is: <http://www.wypanda.com/index.asp>. They may also be reached by phone at their main office in Cheyenne at (307) 632-3496, or at their field office in Lander at (307) 332-8268.

¹³⁰ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 462 (2010).

¹³¹ *Id.*

¹³² NATIONAL CENTER FOR LEARNING DISABILITIES, IEP CHECKLIST FOR PARENTS (2013), AVAILABLE AT [HTTP://WWW.NCLD.ORG/LEARNING-DISABILITY-RESOURCES/CHECKLISTS-WORKSHEETS/IEP-CHECKLIST-FOR-PARENTS](http://www.nclld.org/learning-disability-resources/checklists-worksheets/iep-checklist-for-parents).

¹³³ WYOMING PROTECTION & ADVOCACY SYSTEM, INC. (NOV. 25, 2013), [HTTP://WWW.WYPANDA.COM/INDEX.ASP](http://www.wypanda.com/index.asp).

This may also be a place to refer a parent or foster parent who has concerns about their child's IEP.

Transition Planning and Postsecondary PS-6.05.00

For youth in foster care, success in school can create a positive experience that is different from the life of abuse, neglect, and instability they may have experienced. Youth in foster care who have unmet educational needs are at a higher risk for homelessness, poverty, public assistance, and juvenile or adult Court involvement.¹³⁴ Increasing the support available to youth who are going to age out of the system will improve the likelihood that they will be successful adults.

The John H. Chafee Foster Care Independence Act (Chafee FCIA) was enacted to help those youths who are likely to remain in foster care until the age of 18 reach self-sufficiency. This assistance can extend to the age of 21, and it includes a range of Independent Living Services (ILS) to ease the transition from foster care to independent living. These include:

- Assistance in obtaining a high school diploma;
- Vocational training;
- Job placement services;
- Substance abuse prevention;
- Preventive health activities (smoking avoidance, nutrition education, pregnancy prevention);
- Preparation to enter postsecondary training and education institutions; and
- Personal and emotional support.

The Chafee FCIA also includes Chafee Educational and Training Vouchers (ETV). Under this program, \$5,000 per youth per year is available to help pay for qualifying college or vocational education expenses.¹³⁵ Chafee ETV is available to youth who are eligible for services under the state Chafee program or were adopted from foster care after their 16th birthday. Chafee ETVs do not count towards the youth's financial eligibility status for federal or federally-funded assistance. You should assure your transition aged clients have access to ILS to assist them in applying for these financial assistance programs.

The Fostering Connections Act requires transition plans for older youth in foster care. The plan is intended to be directed by the child and must include specific options for education. For children in foster care receiving special education services, additional transition plans in the form of IEPs must describe measurable postsecondary goals based on age-appropriate transition assessments related to future training or employment and independent living skills. The plan must also describe the transition services required to help the child reach those goals. You should ensure DFS and the client's ILS provider is creating this individualized transition plan for your client before he or she ages out.

NEED MORE?

School Stability:

American Bar Association, Legal Center for Foster Care and Education, *Blueprint for Change*, available at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/education/blueprint_second_edition_final.authcheckdam.pdf

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 22.3.

IDEA and IEPs:

U.S. Department of Education, "Building the Legacy: IDEA 2004," <http://idea.ed.gov/>, November 25, 2013

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 22.4.

Dispute Resolution and Enforcement:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 22.5.

Wyoming Protection & Advocacy System, Inc. <http://www.wypanda.com/index.asp>.

IEP Checklists:

¹³⁴ DONALD N. DUQUETTE & ANN M. HARALAMBIE, *CHILD WELFARE LAW AND PRACTICE*, 453 (2010).

¹³⁵ *Id.*, 486.

National Center for Learning Disabilities, *IEP Checklist for Parents*, available at <http://www.ncld.org/learning-disability-resources/checklists-worksheets/iep-checklist-for-parents>.

National Center for Learning Disabilities, *Checklists & Worksheets*, available at <http://www.ncld.org/learning-disability-resources/checklists-worksheets>.

Transition Planning and Postsecondary:

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 23.2.

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Section Seven: Safety *P3-7.00.00*



UNDERSTAND THE SAFETY DECISION-MAKING PROCESS

Understand the process used to determine whether a child is safe will help you advocate for your clients' best interests.

Safety Decision-Making P3-7.01.00

Making decisions on the safety of a child requires a methodical, logical, and thorough process. You should know the extent of maltreatment, circumstances surrounding the maltreatment, the child's vulnerabilities and strengths, the attitudes and behavior of the parents, and how the parents care for and discipline the child,¹³⁶ in order to make appropriate recommendations to MDTs and at Court.

There are three factors that must be considered when determining whether children are unsafe.

- Threats of danger exist within the family;
- Children are vulnerable to such threats; and
- Parents have insufficient protective capacities to manage or control threats.¹³⁷

Determining whether these three criteria are present is based on analysis of information observed or gathered from reliable sources, as it relates to six safety questions. The answers to these six questions will help you and the Court determine whether a child is unsafe:

1. What is the nature and extent of the maltreatment?
2. What circumstances accompanied the maltreatment?
3. How does the child function day-to-day?
4. How does the parent discipline the child?
5. What are the overall parenting practices?
6. How does the parent manage his or her own life?

The answers to these questions also help you to decide on the necessary actions and recommendations for unsafe children. In addition to the answers to these six questions, you must work with the DFS worker and the Court to determine if any of 15 specific threats of danger are present.¹³⁸ There are also a number of characteristics a vulnerable child may demonstrate. For example, children who are young in age (age infant-six), or who have developmental disabilities are considered vulnerable.¹³⁹ In order to determine whether a parent has sufficient protective capacities, you must work with the DFS worker to determine a parent's

¹³⁶ DONALD N. DUQUETTE & ANN M. HARALAMBIE, *CHILD WELFARE LAW AND PRACTICE*, 319 (2010).

¹³⁷ AMERICAN BAR ASSOCIATION AND ACTION FOR CHILD PROTECTION, INC., *CHILD SAFETY: A GUIDE FOR JUDGES AND ATTORNEYS* (2009), AVAILABLE AT [HTTP://NRCPPS.ORG/DOCUMENTS/2009/PDF/THE_GUIDE.PDF](http://nrcpps.org/documents/2009/pdf/the_guide.pdf).

¹³⁸ DONALD N. DUQUETTE & ANN M. HARALAMBIE, *CHILD WELFARE LAW AND PRACTICE*, 298 (2010).

¹³⁹ *Id.*, 300.

cognitive, behavioral, and emotional strengths. A parent demonstrates a cognitive protective strength when he or she has a plan to protect the child.¹⁴⁰ A behavioral protective capacity is demonstrated, for example, when a parent demonstrates impulse control.¹⁴¹ Finally, emotional protective capacity can be shown when a parent has a strong bond with the child.¹⁴² Be sure you are discussing these issues, concerns, and questions with the DFS worker and parents or caregivers.

Safety Plans P3-7.02.00

A safety plan is put in place when a child is unsafe, based on the presence of the three criteria above. In this situation, the DFS worker decides what actions and tasks will replace the parents' capacity to control threats to the children in the least intrusive manner. This is referred to as a safety plan. Safety plans do not state how the parent should change. Instead, safety plans provide a plan for how to *immediately* control any dangers to the child. Because safety plans require immediate control of dangers, they may allow for 100% in-home care, 100% out-of-home care, or a combination of both. You should have a copy of the safety plan that the worker and family create, and ensure it addresses any safety concerns you have.

It is important to note that safety plans are not the same as case plans. Case plans describe what must change to be successful. The effect of a case plan may also occur over time, whereas safety plans are in place to mitigate immediate threats. Federal and state laws stipulate what must be included in a case plan. Case plans must specify a strategy for addressing the reasons the Court became involved.

Evaluating Progress P3-7.03.00

Progress towards case plan goals is measured in behavioral, emotional, and mental health changes. Case plans should be reviewed at each Court hearing review as well as in between hearings, but no less frequently than every six months. If necessary, case plans can be revised to ensure adherence to federal safety requirements, a logical process for safety decision-making, and goals that will lead to success. You should have a copy of the case plan and should ensure it contains all necessary goals and services that you believe are in the child's best interests.

Reunification P3-7.04.00

The decision to reunite children with their parents is often a difficult one. For this reason, a methodical decision-making process is as important for this process as it is for determining whether a child is unsafe. This will help the decision to be based on objective data, rather than subjective emotions. A review of case plan progress informs the reunification decision and should occur continuously - between and at all Court review hearings.

If an in-home safety plan was previously deemed insufficient, you and the team should consider a number of factors to determine whether reunification can occur, including:

- The status of threats of danger and any new threats;
- Parental willingness and capacity to support in-home reunification;
- Any recommendations from the DFS worker; and

¹⁴⁰ *Id.*, 301.

¹⁴¹ *Id.*, 302.

¹⁴² *Id.*, 303.

- The specifics of a reunification plan.¹⁴³

Note that this is not a complete list of the considerations the team must make. All of these factors are assessed, however, to ensure that reunification does not occur without significant planning and preparation. When an in-home safety plan is sufficient to eliminate any threats to the child, reunification should occur. Remember that the goal of any Juvenile Court proceeding is reunification with the family, unless this is not safe for the child.

Case Closure P3-7.05.00

In order for the case to be dismissed, the case plan must indicate what must change for the child to be completely safe. As stated earlier, as opposed to the safety plan, the case plan provides a more long-term course of goals that reduce specific threats of danger and increase parents' protective capacities.

The Court should dismiss the case when there is sufficient information to support that there are no threats of danger against the child, parents have protective capacities, or both. This also usually coincides with completion of the case plan by the parents.

NEED MORE?

American Bar Association and ACTION for Child Protection, Inc., *Child Safety: A Guide for Judges and Attorneys*, available at http://nrcpps.org/documents/2009/pdf/The_Guide.pdf, 2009.

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 14.

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Section Eight: Domestic Violence P1-8.00.00

☐

UNDERSTAND DYNAMICS OF DOMESTIC VIOLENCE

As a GAL, it is important to learn the family dynamic and be alert to all interactions and relationships with the child client.

☐

REALIZE THAT CO-OCCURRENCE CHILD ABUSE AND DOMESTIC VIOLENCE IS COMMON

Domestic violence and child maltreatment have traditionally been regarded as distinct forms of violence, requiring separate responses. This section recognizes a more holistic approach to address all areas of child abuse, and how to best serve the child's safety and wellbeing.

☐

SCREEN FOR POTENTIAL DOMESTIC VIOLENCE

Become familiar with the domestic violence screening process, and the warning signs to look for, which may indicate possible abuse.

☐

KNOW THE GUIDING PRINCIPLES TO ENSURE SAFETY IN DOMESTIC VIOLENCE CASES

Understand how to identify a threat of danger, and assess the child's safety level with the caregiver. For more information, please see [sections P3-8.04.00](#).

¹⁴³ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 317 (2010).

**UNDERSTAND THE LONG LASTING IMPACTS OF CHILD ABUSE**

Understand the symptoms and impacts of repeated or serious injury resulting from abuse. For more information, please see [section P3-8.05.00](#).

Dynamics *P3-8.01.00*

Clinical observations form the primary basis for current beliefs and understanding about the dynamics of domestic violence. Adequate legal representation requires you to understand contemporary views of child abuse and domestic violence dynamics, and have the ability to ask informed questions throughout the process. Domestic violence in the home in which a child lives has long lasting effects on children. Witnessing this violence against a parent can be traumatic, although all children are affected differently, and the impact to the child depends on the severity and frequency of the abuse, and other supports available to the child. You, as the GAL, need to know if this is occurring in the home. It is also important as you deal with visitation and other aspects of co-parenting between the parents of your client, as you could be putting one parent at risk of harm or even death. Yet, on the other hand, you should not make the assumption that the child should be taken out of the home immediately just because of domestic violence.

It is difficult to gather statistics on child maltreatment and domestic violence because many women are reluctant to discuss or report abuse in the home. Nationwide, domestic violence may be the single major precursor to child maltreatment and neglect. Instances of child abuse in homes where domestic violence is present occur at much higher rates than homes without domestic violence. It is critical to protect an abused parent as a means of protecting the child, as it significantly reduces the risk of the child becoming an abuser himself.

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Co-Occurrence *P3-8.02.00*

Many risk factors may occur simultaneously and place children at a greater threat for maltreatment. There is growing evidence that various forms of maltreatment on children tend to co-occur. Types of overlapping co-occurrence abuse often include sexual, physical, psychological, and witnessing violence. It is important to keep the co-occurrence risk in mind when completing a domestic violence screening, or evaluating threats of danger in the child's home. It is important to remember that many homes where child abuse occurs, domestic violence against a parent, oftentimes the mother, is also occurring.

Key Points to Keep in Mind:

- 50% of men who frequently assault their wives also abuse their children.
- Men who abuse their partners seek sole physical custody of their children two times more often than non-violent men.
 - Perpetrators of domestic violence who were abused as children are more likely to physically harm their children.
 - Battered women were half as likely as men to abuse their children.
 - Witnessing violence may put children at risk for aggressive, anti-social, or fearful behavior.

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Screening *P3-8.03.00*

Domestic violence screening is used to help determine whether a person may be involved in an abusive relationship that needs attention. When possible, the following questions should be addressed with the referring agency or individual about domestic violence.

- Has anyone else in the family been hurt or assaulted? If so, describe the assault or harm (what and when)? If so, who is the victim? Who is the perpetrator?
- Is anyone using economic coercion or emotional abuse to control another family member?
- Are drugs or alcohol present?
- Have there been any threats of suicide or detailed threats to cause harm to a family member?
- Has anyone in the family made threats to hurt or kill another family member or himself? If so, describe what happened. Do you know who is the intended victim? Do you know who is the perpetrator?
- Do you know if weapons have been used to threaten or to harm a family member? If so, what kind of weapons? Are the weapons still present?
- Have the police ever been called to the house to stop assaults against adults or children? Have arrests ever been made?
- Has anyone threatened to take the children?
- Has any family member stalked another family member? As anyone ever taken a family member hostage?
- Do you know who is currently protecting the child?

It is important to remain calm, and convey that these are routine questions asked in all cases. When responses are vague or confusing, additional clarifying questions should be asked to ensure clear understanding of the facts. Survival strategies by victims are often overlooked and the victims are instead blamed for allowing the children to be abused. It's important for you to understand that abusers undermine the parental authority of the victim, which can lead children to have less respect for the victim because they see her as "weak."

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Safety in DV Homes *P3-8.04.00*

You should be aware of circumstances that present harm to the child, and possibilities for reducing that risk to a safe level. A threat of danger is a specific family situation or behavior, emotion, motive, perception, or capacity of a family member that meets each of the following criteria:

- It is specific and can be observed or described;
- It is out of control;
- It is immediate or likely to happen soon; and
- It has severe consequences.

The following are six background questions that should guide safety in each case:

- What is the nature and extent of the maltreatment?
- What circumstances accompany the maltreatment?
- How does the child function day-to-day?
- How does the parent discipline the child?

- What are the overall parenting practices?
- How does the parent manage his or her own life?

By collecting answers to the six safety questions, you and the Court should learn which threats of danger are present. Identifying domestic violence is critical to the safety of children. It is important to remember community resources for victim safety and perpetrator accountability, including, victim advocacy/support services, schools, DFS staff, and effective criminal justice responses to domestic violence. Advocates are an especially valuable resource to keep both the adult victim and child protected from violence. Oftentimes, the best way to keep the children safe is to keep them safely with the non-offending parent.

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Impacts/Symptoms P3-8.05.00

Long-term consequences of child abuse and maltreatment can be profound, and may endure long after the abuse or neglect occurs. Trauma effects can appear in childhood, and may affect various aspects of development, including; physical, cognitive, psychological, and behavioral.

These effects range in consequence from minor physical injuries, low self-esteem, attention disorders, and poor peer relations, to severe brain damage, violent behavior, and death. While maltreated children pose a greater risk for these negative effects, many children are resilient in the face of adversity.

Battered Child Syndrome is an accepted medical diagnosis, and is used when a child has sustained repeated and/or serious injuries by non-accidental means. Battered Child Syndrome may occur at any age; however, the majority of affected children are younger than three years. In some instances the clinical manifestations are limited to those resulting from a single episode of trauma, but more often the child's general health is below normal, and they show evidence of neglect, including poor skin hygiene, multiple soft tissue injuries, and malnutrition.

[NEED MORE?](#)

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 19.6.

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Section Nine: Immigration P3-9.00.00



BE AWARE OF THE SPECIAL IMMIGRANT JUVENILE STATUS OPTION

Understand the requirements for a youth to apply for Special Immigrant Juvenile Status (SIJS) to obtain green card residence in the United States, so appropriate referrals and assistance can be made.

**UNDERSTAND THE BENEFITS AND PROTECTIVE ORDERS COVERED UNDER VAWA**

You should understand what is covered under the Violence Against Women Act, and special protections for immigrants who have been battered by a spouse or parent.

**REVIEW OF IMMIGRATION RELIEF THROUGH THE U AND T VISAS**

The U Visa and T Visa offer immigration relief and services to qualified trafficking victims, and allow eligibility status to gain temporary citizenship in the United States. You should know what the requirements are for these so you can make appropriate referrals.

Special Immigrant Juvenile Status (SIJS) PS-9.01.00

Special Immigrant Juvenile Status (SIJS) provides an avenue for youth to obtain legal permanent residence status in the United States. SIJS provides a green card to allow youth to remain in the U.S. permanently, and gives eligibility for employment authorization, student financial assistance, and places the youth on a path to citizenship.

If U.S. Citizenship and Immigration Services (USCIS) are denied, it is possible that the youth may be referred for deportation, so it is recommended to seek assistance of an immigration attorney before this application is made. As the GAL, you are responsible for recognizing when this may be an option and then referring the client to an immigration attorney. You are not responsible for filing these immigration applications, as doing so without the proper knowledge and training can harm your client.

The process of obtaining SIJS uses a hybrid system of state and federal collaboration. Federal law emphasizes critical facts for determining a youth's best interest, and having jurisdiction under state law to make judicial determinations about custody of care of juveniles. In order to file for SIJS in the U.S., the Juvenile Court must make the following three determinations:

- The child has been "declared dependent on a Juvenile Court" or the child has been "legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or Juvenile Court located in the United States."
- The child's "reunification with [one] or both of the [child's] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law."
- It "would not be in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or last habitual residence."

It is important to stress that the Juvenile Court does not make an immigration decision based on these findings. Preliminary determinations are prerequisites to filing an application for immigration relief from USCIS. With these findings, an application for admission to the status of legal permanent resident status can be filed with USCIS.

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Violence Against Women Act (VAWA) PS-9.02.00

Violence Against Women Act (VAWA) provides domestic violence protective orders and allows certain non-citizens to file for immigration relief when they have been battered, or subject to extreme mental cruelty, by a parent or spouse who is a U.S. citizen or lawful permanent resident. A successful VAWA applicant first receives notice of approval of her prima facie case, then approval of the VAWA petition. Receipt of both

approvals permits a status adjustment to become a lawful permanent resident.

Immigration relief under VAWA can offer qualified recipients the following services:

- Provide waivers to previous bars to benefits;
- Forms of public assistance;
- Derivative status to stabilize immigration status and maintain family integrity;
- Protective orders;
- Allow school, medical, counseling, and welfare records to remain confidential; and
- Prohibits further dissemination of released records.

As with SIJS, careful screening by an immigration attorney is warranted. As the GAL, you are responsible for recognizing when this may be an option and then referring the client to an immigration attorney. You are not responsible for filing these immigration applications, as doing so without the proper knowledge and training can harm your client.

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U and T Visas and Other Immigration Relief P3-9.03.00

“U VISAS” P3-9.03.01

U Visas were authorized by Congress in 2000 as part of the Trafficking Victims Protection Act (TPVA). U Visas are available under one of the following conditions:

- Noncitizens who have suffered substantial physical or mental abuse as a result of a qualifying criminal activity that occurred in the U.S. or violated U.S. law; or
- Possess information concerning substantial physical or mental abuse as a result of a qualifying criminal activity that occurred in the U.S. or violated U.S. law; and have been helpful, are being helpful, or are likely to be helpful to the investigation or prosecution of the criminal activity.

The U Visa provides authorization to remain in the U.S. with employment authorization for up to four years. However, the recipient may qualify to adjust his or her status to lawful permanent resident after completing three years on the U Visa status. The U Visa is also the most generous in immigration law and may permit extension of U Visa status to qualifying family members. As the GAL, you are responsible for recognizing when this may be an option and then referring the client to an immigration attorney. You are not responsible for filing these immigration applications, as doing so without the proper knowledge and training can harm your client.

“T VISAS” P3-9.03.02

Like the U Visa, the T Visa is authorized by Congress through the TVPA. The T Visa is distinguished by the fact it is available to a person who in in the U.S. as a “victim of a severe form of human trafficking” and meets all cooperation criteria with law enforcement. Commercial sex trafficking of children is considered to be a severe form of trafficking in persons under TVPA. A severe form of human trafficking is defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion; or

- The person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

In most cases, persons who qualify for the U Visa will likely also qualify for the T Visa. As with the U Visa, recipients of the T Visa can qualify for some forms of public assistance, and can provide waivers to bars of benefits that apply to persons who achieve permanent resident status through other immigration relief avenues. Again, it is highly recommended to consult with immigration counsel regarding each unique person and circumstance. As the GAL, you are responsible for recognizing when this may be an option and then referring the client to an immigration attorney. You are not responsible for filing these immigration applications, as doing so without the proper knowledge and training can harm your client. A resource in Colorado that you may use for resources and referrals is the Rocky Mountain Immigration Assistance Network, <http://www.rmian.org>.

NEED MORE FOOTNOTES?

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Ch. 17 and 20.
Rocky Mountain Immigrant Advocacy Network, <http://www.rmian.org>.

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Section Ten: Bias *P3*-10.00.00

☐

ALWAYS ACT WITH CULTURAL SENSITIVITY

It is imperative that you are aware of cultural diversity, and how to avoid bias or the appearance of bias.

☐

BE AWARE OF THE ROLE OF POVERTY IN JUVENILE COURT

Poverty often plays a major role in youth receiving services in the welfare system.

☐

ASSIST AND SUPPORT YOUR LGBTQ CLIENTS

You can help LGBTQ (lesbian, gay, bisexual, transgendered, and questioning) youth in the system by providing resource information and support, with understanding that these clients often face increased difficulties.

Cultural Sensitivity *P3*-10.01.00

While working toward a better future, youth need to feel connected with a family, culture, or community on their own terms.¹⁴⁴ Youth who are removed from their birth families can lose touch with their culture of origin. Attention to the cultural context of a child increases the likelihood that the services provided will positively resolve cases and protect the child's safety and well-being.

Good practice requires that when you are acting as a child's representative you understand who the child is and what the child's background is. It is of utmost importance that the attorney set aside one's own background to discern what is important and in the best interests of the child.

Research in social cognition regarding implicit bias has gained substantial attention from social and cognitive psychologists. It is important to be aware of both *Explicit* and *Implicit* Bias, understand the difference, and develop a safe environment for the youth.

Key Definitions:

¹⁴⁴ DONALD N. DUQUETTE & ANN M. HARALAMBIE, *CHILD WELFARE LAW AND PRACTICE*, (2010).

- Explicit Bias: is a conscious preference (positive or negative) for a social category.
- Implicit Bias: is a preference (positive or negative) for a social category that operates outside of awareness.

Components of Bias Include:

- Stereotypes: generalizations about the perceived “typical” characteristics of a social category (cognitive component).
- Prejudice: how one feels about members of a given social category (affective component).
- Discrimination: how one acts toward members of a given social category (behavioral component).

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Poverty PS-10.02.00

The majority of child welfare cases across the United States involve people who live at or below the poverty line. Maltreatment, neglect, and child poverty have a substantial economic impact on the American legal system, state child welfare agencies, and other institutions. It is important to remember that child maltreatment is not confined to one or several racial, religious, or economic groups, but is defined by each person’s unique circumstance. Your role must be to teach, provide support, and set expectations for moving forward.

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LGBTQ PS-10.03.00

Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are in America’s child welfare and juvenile justice systems in disproportionate numbers. One’s sexual orientation does not define him or her as a person, nor frame the needs he or she may have in the system. Like all young people in care, LGBTQ youth have the right to be safe and protected.

You should not assume the child is heterosexual, and should communicate acceptance, sensitivity, and respect about sexual orientation and gender identity. There is no need to be shy regarding inquiry to the client’s orientation, because it could play a significant role in his or her child welfare system experience. It is important to offer information to ensure LGBTQ youth receive the support and quality services they deserve. The Child Welfare League of America (CWLA) and Lambda Legal are additional resources, and offer a Tool Kit of information, including, but not limited to:

- Basic Facts About Being LGBTQ;
- Information for LGBTQ Youth in Care;
- Families Supporting an LGBTQ Child;
- Caseworkers with LGBTQ Clients;
- Foster Parents Caring for LGBTQ Youth;
- Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth;
- Working with Transgender Youth; and
- LGBTQ Youth Resources.

[*NEED MORE?*](#)

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, p. 647-648.
 Aha! Process, Inc., *Reducing Poverty: Bridges Out of Poverty*, available at <http://www.bridgesoutofpoverty.com>.
 American Bar Association, *Opening Doors/LGBTQ Youth in Foster Care*, available at
http://www.americanbar.org/groups/child_law/what_we_do/projects/openingdoors.html.
 CWLA and Lambda Legal, *Getting Down to Basics: Tools to Support LGBTQ Youth in Care*, available at
http://www.lambdalegal.org/sites/default/files/gdtb_2013_complete.pdf

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Section Eleven: Permanency *P3-11.00.00*

- | | |
|--------------------------|---|
| <input type="checkbox"/> | UNDERSTAND THE IMPORTANCE OF PERMANENCY FOR CHILDREN
<i>Understand how to define permanency and the permanency hierarchy.</i> |
| <input type="checkbox"/> | HOLD PERMANENCY HEARINGS IN ACCORDANCE WITH THE LAWS
<i>Understand the requirements of the permanency hearing.</i> |
| <input type="checkbox"/> | IDENTIFY STRATEGIES FOR ACHIEVING PERMANENCY
<i>Identify resources and approaches to permanency, including adoption and guardianship.</i> |

Background Information P3-11.01.00

ASFA clearly and unequivocally establishes three national goals for children in foster care: safety, permanency, and well-being. Permanency is achieved when children are returned to their families (without further Court supervision), when children are adopted, or when children are placed with individuals who are their permanent guardians. ASFA prioritizes reunification of the child with their family.

Definition of Child Permanency P3-11.02.00

To meet the ASFA goal that children have permanency and stability in their living situations and continuity of family relationships, permanency is achieved when children are returned to their families (without further Court supervision), when children are adopted, or when children are placed with permanent guardians (42 U.S.C. Sec 675 (5)(c)).

Hierarchy P3-11.03.00

The hierarchy of permanency is as follows:

- Reunification;
- Adoption;
- Guardianship;
- Placement with Fit and Willing Relative; and
- Alternative planned permanent living arrangement (APPLA).

APPLA/OPPLA P3-11.03.01

Other Planned Permanent Living Arrangement (OPPLA), also known as Another Planned Permanent Living Arrangement (APPLA), is a term

created by the Adoption and Safe Families Act of 1997 to replace the term "long-term foster care." With OPPLA, the child welfare agency maintains care and custody of the youth and arranges a living situation in which the youth is expected to remain until adulthood. OPPLA or APPLA is a permanency option only when other options such as reunification, relative placement, adoption, or legal guardianship have been ruled out. It is the least favored of the permanency options.¹⁴⁵

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Permanency Hearings PS-11.04.00

Permanency Hearings shall take place no later than 12 months from dates of child's removal and every 12 months thereafter (Wyoming Statute Section 14-3-431 (d.)). They are also held within 30 days of determination that reasonable efforts (RE) are not required. The Court makes a determination of reasonable efforts as outlined in Wyoming Statute Section 14-3-440 and also determines whether the permanency plan is in the best interests of child.

At the Permanency Hearing, DFS shall present to the Court:

- The efforts made to effectuate the permanency plan for the child;
- Address the options for permanency;
- Examine the reasons for excluding permanency options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the permanency plan; and
- DFS must also present to the Court a compelling reason for establishing a permanency plan other than reunification, adoption or legal guardianship.

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Strategies to Enhance Permanency PS-11.05.00

According to the Child Welfare Information Gateway¹⁴⁶, there are several strategies to enhance permanency as highlighted below:

- Involve youth in planning their own permanency;
- Maintain children safely with their birth families;
- Use guardianship to provide legal and permanent families;
- Maintain relationships with kin;
- Ensure appropriate and timely services; and
- Strengthen Court supports.

Family Finding and Diligent Search PS-11.06.00

Due diligence must be taken to search for family members of a child in DFS custody, including grandparents, aunts/uncles, and other family members. DFS is responsible for this family search and it begins at the very start of the case and continues throughout.¹⁴⁷

¹⁴⁵ DONALD N. DUQUETTE & ANN M. HARALAMBIE, *CHILD WELFARE LAW AND PRACTICE*, CHAPTER 24 (2010).

¹⁴⁶ CHILD WELFARE GATEWAY INFORMATION GATEWAY, *ENHANCING PERMANENCY FOR YOUTH IN OUT-OF-HOME PLACEMENT* (2013), AVAILABLE AT [HTTPS://WWW.CHILDWELFARE.GOV/PUBS/FOCUS/ENHANCING/ENHANCING.PDF](https://www.childwelfare.gov/pubs/focus/enhancing/enhancing.pdf).

¹⁴⁷ DEPARTMENT OF FAMILY SERVICES, *PLACEMENT AND PERMANENCY* (2010), AVAILABLE AT [HTTP://WWW.COURTS.STATE.WY.US/CJP/DILIGENTSEARCHRELATIVE.PDF](http://www.courts.state.wy.us/CJP/DILIGENTSEARCHRELATIVE.PDF).

[NEED MORE?](#)

Child Welfare Gateway Information Gateway, *Enhancing Permanency for Youth in Out-of-home Placement*, available at <https://www.childwelfare.gov/pubs/focus/enhancing/enhancing.pdf>.

Fostering Connections Act of 2008

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 24 and 25.

United States Department of Health & Human Services, Administration for Children & Families, Children's Bureau, <http://www.acf.hhs.gov/programs/cb/>.

Dependency Dockets, GAL Program Website, gal.wyo.gov.

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Section Twelve: Termination of Parental Rights *P3-12.00.00*



UNDERSTAND THE GROUNDS FOR TERMINATION OF PARENTAL RIGHTS (TPR)

Understand the circumstances that may lead to a termination of parental rights and correctly prepare the case for TPR if it is needed.

A Termination of Parental Rights (TPR) is a balance of three competing interests: a parent's fundamental right to parent their child, the child's right to safety and permanency, and the state's interest in protecting the child. Parents, guardians or legal custodians, or DFS (through DA/CA or AG Child Permanency Unit) may file a petition for TPR. Once the petition for TPR has been filed, the Court will appoint a GAL to represent the child.

In Wyoming, there are eight separate grounds for a TPR:

- “(i) The child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one year. In making the above determination, the Court may disregard occasional contributions, or incidental contacts and communications. For purposes of this paragraph, a Court order of custody shall not preclude a finding that a child has been left in the care of another person;
- (ii) The child has been abandoned with no means of identification for at least three months and efforts to locate the parent have been unsuccessful;
- (iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child's health and safety would be seriously jeopardized by remaining with or returning to the parent;
- (iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;
- (v) The child has been in foster care under the responsibility of the state of Wyoming for 15 of the most recent 22 months, and a showing that the parent is unfit to have custody and control of the child;
- (vi) The child is abandoned at less than one year of age and has been abandoned for at least six months;
- (vii) The child was relinquished to a safe haven provider in accordance with Wyoming Statute Section 14-11-101 through 14-11-109, and neither parent has affirmatively sought the return of the child within three months from the date of relinquishment;

(viii) The parent is convicted of murder or homicide of the other parent of the child under Wyoming Statute Section 6-2-101 through 6-2-104.”¹⁴⁸

Note that more than one ground may be alleged, but only one must be proven with clear and convincing evidence.

Under federal law, TPR proceedings are required for:

- Children who have been in foster care for 15 of the most recent 22 months;
- Infants who have been determined abandoned;
- Cases in which a parent has killed another of his or her children; or
- Certain other egregious situations.

Wyoming Statute Section 14-2-318 states that the Court may appoint an attorney for any party who is indigent. If parental rights have been terminated, options for placement of the child include adoption, kinship care, and adoption by foster parents. If the TPR is denied, the Court’s options are:

- The TPR case is closed and the juvenile action stays open for new permanency determination; or
- The Court can put in a six-month reasonable efforts (RE) order, where DFS has six-months to make reasonable efforts that weren’t made while the TPR case stays open.

The GAL Program has a Permanency Attorney that handles the GAL representation for Program clients in TPR and Appellate procedures, so this section is not meant to train you on how to represent a client in this proceeding. Rather, it is meant to assist you in understanding this proceeding so you can prepare the underlying juvenile action appropriately.

[NEED MORE?](#)

Burman, *Justice for Children*, Section 10.

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 7.7.

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 11.5.

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 16.12.

Dependency Dockets, GAL Program Website, gal.wyo.gov.

[Return to Checklist](#)

Section Thirteen: Appeals *P3*-13.00.00

☐

BE INFORMED ABOUT THE APPEAL PROCESS

Understand the details and intricacies of the appeals process.

☐

TAKE APPROPRIATE ACTION DURING THE APPEAL PROCESS

Know how and when to complete specific tasks within the appeals process.

In the event that the Court’s decision produced an unfavorable outcome for your client’s best interests, and you would like to have your case heard before a higher Court, you may file a notice of appeal. An appeal subjects the entire case, including the facts

¹⁴⁸ WYO. STAT. ANN. § 14-2-309(A).

and the law, to review by a higher Court. Note that any party to any Juvenile Court case can appeal, including you, as the GAL.

Decision to Appeal P§13.01.00

You must decide whether you should appeal. The first step in this process is to determine whether the order in question is appealable. In general, the “final judgment” rule, in which appellate Courts cannot review any rulings for which any further judicial action is required by the Courts, is in place. However, there are a number of exceptions to the “final judgment” rule.

Next, you must be aware of time limits in filing the appeal. In Wyoming, the appellant has 30 days from the date of the judgment to file. If you think you have an appealable issue on behalf of your client, please consult with the Program Administrator or Permanency Attorney right away so the two of you can determine if it is an appealable issue and when to file.

Stays and Supersedes P§13.02.00

Initial stay requests should be filed in the trial Court. Whether the stay is granted is dependent on:

- The likelihood of hardship or harm to the child if the stay is denied;
- Whether the appeal has merit and is taken in good faith;
- The harm to the nonmoving party if a stay is granted; and
- Other considerations.¹⁴⁹

Temporary stays can be requested while the stay request is pending. If a stay is denied, the petitioner may seek a stay in the appellate Court.

Informing the Court of Post-Judgment Events P§13.03.00

In your role as a GAL, you are required to inform the Court of any subsequent events that may cause an appeal to become moot. Evidence of these events may be presented to the Court in the following ways:

- Motion to Take Judicial Notice;
- Motion to Take Additional Evidence; or
- Motion to Dismiss Appeal.

Since the Permanency Attorney will be handling the appeal, you need to stay in close contact with him or her and inform the attorney of any changes that may affect the appellate proceeding.

¹⁴⁹ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 556 (2010).

Writs *P3-13.04.00*

A writ is an original proceeding asking an appellate Court to command an inferior Court to do something or to refrain from doing something. The parties to a writ proceeding are the petitioner, who is beneficially interested but was not necessarily a party to the lower Court proceeding; the respondent; the Court and judge whose action is being challenged; and the real party in interest.

There are two criteria that must be met to qualify for writ relief. First, the petitioner must demonstrate that he or she does not have a “speedy and adequate remedy”¹⁵⁰ in the ordinary course of law, such as through the appeals process. Second, the petitioner must also show that any failure to grant relief will place the petitioner at risk for irreparable harm. Since writs are heard more quickly than appeals, this option may be a consideration if these two criteria are met.

The GAL Program has a Permanency Attorney that handles the GAL representation for Program clients in TPR and appellate proceedings, so this section is not meant to train you on how to represent a client in this proceeding. Rather, it is meant to assist you in understanding this proceeding so you can prepare the underlying juvenile action appropriately. If you think you have an appealable issue, need a stay, or want to bring a writ, please contact the Administrator or Permanency Attorney.

[NEED MORE?](#)

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 26.
Dependency Dockets, GAL Program Website, gal.wyo.gov.

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Section Fourteen: Other Collateral Judicial Proceedings *P3-*

14.00.00



BE AWARE OF THE COLLATERAL PROCEEDINGS YOUR CLIENT AND HIS/HER FAMILY MAY BE INVOLVED IN

This includes cases that occur at the same time as the Juvenile Court case or arise out of the Juvenile Court case, such as criminal, protective orders, private custody, adoption, or guardianship proceedings.

There are a handful of other Court proceedings that either run parallel to the Juvenile Court case or arise out of the Juvenile Court case that you should be aware of.

Criminal Proceedings *P3-14.01.00*

A criminal case is sometimes filed against the parent at the same time as the Juvenile Court proceeding. It is important to understand that these cases have their own

¹⁵⁰ *Id.*, 544.

timelines to follow and cannot wait for each other. They will also likely have completely different attorneys involved. Remember that the Juvenile Court case is confidential, so extreme caution should be used if information is requested from the Juvenile Court case for the criminal Court case. That said, you should follow this proceeding and keep track of its progress. If the case gets to sentencing, you may need to assist in preparing your client to testify at the sentencing hearing, if the client wants to testify. If the child is young, and you think it is in his or her best interests, you can consider writing a statement on behalf of your client. These are tools at your disposal, as long as you are only sharing information that is in the criminal Court case, and not confidential to the Juvenile Court proceeding.

Protective Orders *PJ-14.02.00*

If there is domestic violence present in the family, there could be a domestic violence protection order in place. The parent could also seek this while the Juvenile Court proceeding is open. Be sure the Court and DFS are aware of this proceeding or order if there is one.

Private Custody Proceedings *PJ-14.03.00*

The parents could be involved in any number of private actions including establishment of paternity, child support, child custody, divorce, or a private termination action. Sometimes, it is the finalization of a private custody proceeding that needs to occur before the Juvenile Court case can close. If this is the case, and the family cannot afford an attorney, refer them to the Wyoming Center for Legal Aid <http://www.legalhelpwy.org/index.php/self-help/> or 1-877-432-9955 or the Wyoming State Bar.

More legal aid providers in Wyoming:

For Wyoming victims of domestic violence, sexual assault, and their children:

- Wyoming Coalition Against Domestic Violence and Sexual Assault - 307-755-5481

For residents in the Jackson and Teton County area:

- Teton County Access to Justice Center - 307-734-9023

University of Wyoming Legal Clinics:

- Legal Services - (307) 766-2104
- Domestic Violence - (307) 766-3747
- Defender Aid - (307) 766-3223
- Estate Planning - (307) 766-6441

Adoption and Guardianship Proceedings *PJ-14.04.00*

Adoption and guardianship proceedings are two cases that may arise out of the Juvenile Court proceeding in order to effectuate

permanency for your client. Many times, adoptions and guardianships are separate Court actions and, as such, the GAL is not a party to those actions. However, adoptions and guardianships can be filed within the Juvenile Court action and, if done so, the GAL is a party to the action and entitled to be present. Either way, you should be aware of these and track the proceedings progress to ensure they are completed timely. Also, be aware that the family adopting or taking guardianship of your client may qualify for subsidies, if needed, especially if the child has significant health needs or is an older youth.

[NEED MORE?](#)

Burman, *Justice for Children*, Chapters 19 and 25.
Dependency Dockets, GAL Program Website, gal.wyo.gov.

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Section Fifteen: Transitioning from Foster Care *P3-15.00.00*

☐

ENSURE TRANSITION AGED YOUTH HAVE INDEPENDENT LIVING SERVICES (ILS)

ILS helps older youth make the transition out of the foster care system and become self-sufficient adults. You should ensure your client has access to these services, and is involved in planning for their future.

☐

CONSIDER A PERMANENCY PACT/PLANNING WITH YOUR CLIENT BEFORE TRANSITION

A permanency pact is an option that can help to substantiate an on-going connection between youth and a supportive adult as they transition out of foster care.

Independent Living Services P3-15.01.00

ILS extends assistance to foster youth up to age 21, and helps prepare older youth as they age out of the system. It is imperative to ensure foster youth aging out of the system start planning for this transition early and access these ILS services to assist them. ILS offers assistance in the following areas:

- Help to obtain a high school diploma;
- Vocational training;
- Job placement services;
- Substance abuse prevention;
- Preventive health activities (includes smoking avoidance, nutrition education, and pregnancy prevention);
- Preparation to enter postsecondary training and education institutions; and
- Personal and emotional support through mentors and the promotion of interactions with dedicated adult(s).

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Permanency Pact/Planning for The Transition PS-15.02.00

A Permanency Pact creates a formalized, facilitated process, which connects foster care youth with a supportive adult to help them transition out of the system. A Permanency Pact provides:

- Structure and a safety net for the youth;
- A defined and verbalized commitment by both parties to a long term supportive relationship; and
- Clarity regarding the expectations of the relationship.

The process of establishing a permanency pact consists of the following steps. First, a Facilitator will engage the youth to identify the type of support he or she wants and needs, during and after the transition to adulthood. Together they will establish a list of adult(s) who may be able to fulfill some of those supports. The Facilitator will then:

- Obtain necessary releases of information;
- Make initial contact with the identified adult(s);
- Contact and update the identified adult(s) regarding the youth's current situation;
- Gauge the identified adult(s) level of interest;
- Assist the adult(s) in identifying possible supports they are willing and able to provide; and
- Schedule and facilitate the Permanency Pact meeting between the foster youth and the identified adult(s).

In the Permanency Pact documentation, there is a list of 45 Suggested Supports associated with the Permanency Pact the supportive adult(s) can reference and might offer the youth transitioning from care. To symbolize the importance of the commitment, it is recommended to conduct a ceremony or celebration to authenticate the Permanency Pact.

NEED MORE?

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 23.

American Bar Association, *Bar-Youth/Aging Out of Foster Care*, available at

http://www.americanbar.org/groups/child_law/what_we_do/projects/empowerment.html.

Foster Club, *Permanency Pact*, available at <http://www.nrcyd.ou.edu/publication-db/documents/permanency-pact.pdf>.

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Section Sixteen: Non-Adversarial Case Resolution *P3-16.00.00*

- ☐ **THE CASE MAY BE REFERRED TO A NON-ADVERSARIAL CASE RESOLUTION (NACR) PROGRAM**
Understand that child welfare cases may be referred to and resolved through non-adversarial case resolution (NACR) programs.
- ☐ **KNOW THE DIFFERENT TYPES OF NACR**
Understand alternatives available, characteristics of the NACR programs, as well as the benefits of these alternative programs.

Background on NACR P3-16.01.00

Cases and families in Juvenile Court can be referred to a Non-Adversarial Case Resolution (NACR) program or to be ordered into NACR by the Court. “Professionals who work with children and parents have become increasingly dissatisfied with the customary reliance on the traditional adversarial system in resolving family-related disputes, including cases involving children’s protection, placement, and permanent care.”¹⁵¹ These options will vary by county throughout Wyoming. Your job as the GAL is to represent your client’s interests in these processes just like you would in the Court process.

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Common NACR Options P3-16.02.00

MEDIATION *P3-16.02.01*

Mediation is an accepted form of NACR. Mediation implies deliberation that results in solutions that may or may not be accepted by the contending parties. Arbitration involves a more formal deliberation, it being understood that the results will be binding on the contending parties. Mediation is widely used today in domestic relations custody disputes between parents nationwide, and it is increasingly found in many juvenile delinquency, juvenile status offender, and child welfare proceedings.¹⁵² So far, Wyoming is using NACR in juvenile court on a limited basis.

FAMILY GROUP CONFERENCE (FGC) *P3-16.02.02*

FGC is a form of NACR that involves engaging extended family members of a child and does not necessarily require mediation. FGC is family-focused, strengths-oriented, and community-based approach that involves parents, extended family members, and

¹⁵¹ DONALD N. DUQUETTE & ANN M. HARALAMBIE, CHILD WELFARE LAW AND PRACTICE, 509 (2010).

¹⁵² *Id.*

others, to make key decisions for children involved in the child welfare system.¹⁵³ In Wyoming, this was a precursor to FPC, and is not often used.

FAMILY PARTNERSHIP CONFERENCING (FPC) P3-16.02.03

FPC is a modified version of the Family Team Conferencing (FTC) model. Wraparound Services are a foundation to many of these models. Instead of all of the critical decisions for the family being made solely by professionals, FPC allow people who know and care about the family members to be involved in finding solutions to their family crisis. FTC (and FPC) is a gathering of family members, friends, professionals, and other interested individuals who join together to improve the lives and functioning of all the members of a specific family. In Wyoming, this is typically conducted by DFS and involves the client's family.

WRAPAROUND P3-16.02.04

The wraparound process is an intensive, individualized care management process for children and youth with serious or complex needs. During the wraparound process, a team of individuals, including family members, other natural supports, service providers, and agencies, collaboratively develop an individualized plan of care, implement this plan, and evaluate success over time. The process of engaging the family, convening the team, developing the plan, implementing the plan, and transitioning the youth out of formal wraparound is typically facilitated by a trained care manager or "wraparound facilitator," sometimes referred to as the family care coordinator. This is also known in Wyoming as High Fidelity Wraparound (HFWA).

[NEED MORE?](#)

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 24.

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Section Seventeen: Native American / ICWA P3-17.00.00



UNDERSTAND THE PURPOSE AND REQUIREMENTS OF THE INDIAN CHILD WELFARE ACT (ICWA)

Knowing the jurisdictional provisions for your client will allow you to advocate for his or her best interests and to ensure compliancy with federal law.

The Indian Child Welfare Act (ICWA) is a substantive federal law whose purpose is to preserve Indian families. ICWA establishes strict guidelines for when an "Indian child" is involved in a "child custody proceeding," including any action involving foster care placement, adoption, or termination of parental rights. Because dependency cases very often involve foster care placement, it is essential that you are well-versed in ICWA's requirements, as failure to follow these requirements can result in invalidation of the

¹⁵³ *Id.*

proceedings. If ICWA applies to your case, see the Bureau of Indian Affairs, Guidelines for State Courts; Indian Child Custody Proceedings (BIA Guidelines) for guidance on ensuring compliance with ICWA's many requirements. Remember that several of ICWA's provisions are jurisdictional and can thus be raised at any time during the proceedings. As a result, it is imperative that ICWA compliance starts at the beginning of the case so permanency for the child is not disrupted at a later date. Any party can bring a petition to invalidate state Court action taken in violation of ICWA. Therefore, it is critical that the Court makes the necessary findings under ICWA and the Court orders reflect the correct findings.

Indian Child and Notice PS-17.01.00

At the outset of the case, the Court must determine if the child is an Indian child for purposes of ICWA. An Indian child is defined as any unmarried person who is under age eighteen and is either:

- A member of an Indian tribe; or
- Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

If the Court determines that the child is, or may be, an Indian child, the state must notify the child's tribe (or to more than one tribe if the child may be a member of multiple tribes). If tribal affiliation is unknown, the state must provide notice to the Secretary of the Interior. When in doubt, provide notice to any possible tribes as well as the Secretary of the Interior. You should ensure that the Notice has been sent via Certified Mail with a "green card" (return receipt) returned indicated that the tribe has received the document. Best practice dictates that the "green card" be filed with the Juvenile Court.

Tribal Jurisdiction PS-17.02.00

If the case involves an Indian child who resides within the reservation or is a ward of the tribal Court, ICWA provides that the tribe has exclusive jurisdiction over that child. ICWA has placement provisions; however, each tribe must establish its own placement preference, which then triggers ICWA to apply. In this situation, a non-tribal Court may order a child removed from the custody of the parent only "to prevent imminent physical damage or harm to the child." This order must terminate when it is no longer necessary to prevent such physical damage or harm. If you believe that your client resides, or is domiciled within, the reservation, it is necessary to conduct an investigation into such residence to determine whether these provisions of ICWA apply.

If the case involves an Indian child who does not reside on the reservation, the state Court and tribal Court have concurrent jurisdiction. In such cases, the action must be transferred to the tribal Court if transfer is requested by the parent or the child's tribe. The state Court can maintain jurisdiction if the parent objects to the transfer, the tribe declines the transfer, or if there is "good cause" shown why transfer is not appropriate.

"Good cause" is, of course, not defined by ICWA. The BIA Guidelines set forth some situations in which a Court might find that good cause exists

to decline to transfer a case to the tribal Court. These situations include:

- No tribal Court exists;
- The request for transfer was made late in the case and well after notice was received;
- The child objects to the transfer (and the child is over the age of 12);
- Undue hardship to the parties or witnesses would exist in the presentation of evidence; or
- The child (over the age of five) has had little to no contact with the tribe, and the parents are not available.

Specific Findings in Dependency Proceedings PS-17.03.00

If your case involves an Indian child, the Court must make specific ICWA findings at various stages of the proceedings. Before the Court removes a child from his or her home, the Court must find by clear and convincing evidence “that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” A qualified expert witness must testify regarding the damage to the child. ICWA does not define what “qualifies” an expert witness, but the BIA Guidelines state that it may include:

- A member of the child’s tribe who is an expert in the family organization and childrearing practices of the tribe;
- A non-Indian expert who has “substantial experience” in providing services to Indian families and knowledge of the Indian culture and family practices of the child’s tribe; or
- A professional who has substantial knowledge and experience in his or her field.

Active Efforts PS-17.04.00

The Court must also find that “active efforts” have been made to “prevent the breakup of the Indian family.” Although not defined by ICWA, the “active efforts” requirement generally means that the agency, or the state, must provide more than the “reasonable efforts” provided in non-ICWA cases.

Placement Preferences PS-17.05.00

ICWA establishes specific placement preferences for an Indian child who has been removed from the home. The overarching requirement is the child be placed in the least restrictive, most family-like setting that will meet the child’s needs, and that the placement be proximate to the child’s home. ICWA sets forth placement preferences in descending order as follows:

- Family member;
- Foster home licensed or approved by the child’s tribe; or
- Indian foster home licensed by a non-Indian licensing authority (aka DFS).

ICWA does not specifically recognize placement in a non-Indian foster home licensed by a non-Indian licensing authority, which are

most of the foster homes licensed by DFS. However, it is generally recognized that if none of the options listed are available, such placement is appropriate. If the child needs institutional care, the institution must either be approved by the tribe or operated by an Indian organization.

ICWA also establishes specific placement preferences when the goal for the child has changed to adoption. Those placement preferences are as follows:

- Family member;
- Another member of the child's tribe; or
- Another Indian family.

Termination of Parental Rights *PS-17.06.00*

Before a parent's rights can be terminated, the Court must find beyond a reasonable doubt that "the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." The termination proceeding must also include testimony of a qualified expert witness regarding the damage to the child. The Court must also find that "active efforts" were made to return the child to his or her family.

Full Faith and Credit *PS-17.07.00*

State Courts must give full faith and credit to tribal Court orders. In cases where state and federal laws are inconsistent, ICWA states the highest protection law shall stand.

NEED MORE?

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapter 12.
Native American Rights Fund, *A Practical Guide to the Indian Child Welfare Act*, available at <http://narf.org/icwa/>.

Jones, *The Indian Child Welfare Act Handbook*, available at
<http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>.

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Section Eighteen: DFS Case Plans *PS-18.00.00*



YOU SHOULD REQUEST AND REVIEW A COPY OF EACH CLIENT'S CASE PLAN

This section provides an overview of the DFS Case Plan, as well as key elements to consider when reviewing each client's case plan.

DFS Case Plans *PS-18.01.00*

A case plan is often referred to in Wyoming as the family service plan. It is a plan for change, which should identify strategies for change

while maintaining a controlled safety plan. Federal law requires the agency to develop a case plan within 60 days from the time a child is removed from the parents' home. Parents, guardians, and youth are entitled to participate in developing the case plan. The case plan should clearly outline roles and responsibilities of each party, as well as expectations and guidelines for the plan.

It is important to review the client's case plan in order to familiarize yourself with all details around the home environment. This background knowledge is key in order to independently investigate the case. Also, ensure the background work is done by the caseworker before writing the case plan. If it has not been done, then ask that it be completed or motion the Court. Before arriving at any conclusions, the caseworker should:

- Review contact notes, recorded observations, progress summaries, and any evaluations to identify trends that may impact progress;
- Have conversations with the parents regarding their perceptions on how things are changing (focus on behaviors related to safety and protective measures in the home);
- Review and discuss with the parents their general understanding of the issues that caused the agency/Court involvement (share, compare, and contrast perceptions between the worker and the parent);
- Have conversations with the child/children about their perceptions while observing their needs;
- Build collateral contacts with: service providers, schools, health care providers, substitute caregivers, relatives, and any other individuals that may be able to provide perceptions on the case plan and the child's progress; and
- If children were placed to keep them safe, discuss with all parties whether conditions for return to the home have been met.

Concurrent Planning PS-18.02.00

Concurrent Planning is required and should be developed as a "plan b" if the child is unable to be reunified with their parents. This is best done working with the parents to identify what options they have available. Some common questions to start this conversation are: "Have you thought about where your child(ren) would live if something happened to you and you passed away? Who? Why? Where?" When reunification seems unlikely, DFS might choose to place the child in a foster-adoptive home. This type of concurrent planning shortens the time to permanency, as it allows the foster parents to adopt the child if parental rights are terminated. The foster-adoptive home option also increases the likelihood that the child will not have to move if the case plan changes. As a GAL, you should be engaging in concurrent planning from the beginning of the case to ensure the child will have permanency if reunification is unsuccessful. Ask the child the same questions you would ask the parents: "Where would you like to live if not with your parents? Why?"

NEED MORE?

Duquette and Haralambie, *Child Welfare Law and Practice*, Second Edition, Chapters 13.4 - 13.7, 16.9, and p. 357.

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Section Nineteen: Incarcerated Parents in Juvenile Court *P3-*

19.00.00



ENSURE YOUR CLIENT HAS APPROPRIATE ACCESS TO THEIR INCARCERATED PARENT

Understand the importance of allowing children involved in the legal welfare system access to incarcerated parents and the importance of DFS conducting case planning with this parent.

Termination of Parental Rights P3-19.01.00

Incarceration alone is not a ground for termination of parental rights. Title 14, under the grounds for TPR, states that in order to terminate rights the parents must be incarcerated due to the conviction of a felony and that the parent is unfit to have the custody and control of the child. So, unfitness must be proven in addition to the incarceration.

Federal law has long required state agencies to demonstrate that “reasonable efforts” have been made to provide assistance and services to prevent the unnecessary removal of a child from his or her home and make it possible for a child who has been placed in out-of-home care to be reunited with his or her family. Reasonable efforts must be made with parents who are incarcerated until the Court relieves DFS of this responsibility.

Reasonable efforts are not required when determination by the Court by clear and convincing evidence that:

- Parent has been convicted of crimes, including murder or voluntary manslaughter of another child of the parent or aiding and abetting, attempting, conspiring to commit or soliciting such a crime; or
- Commission of a felony assault which results in serious bodily injury (defined in Wyoming Statute Section 6-1-104) to a child of the parent; or
- Parental rights of the parent to any other child have been terminated involuntarily; or
- Parent abandoned, chronically abused, tortured or sexually abused the child; or
- Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

Incarcerated Parental Rights P3-19.02.00

Adoption and Safe Families Act (ASFA) requires states to make reasonable efforts to reunite parents with their abused or neglected children. There is evidence that having a child maintain contact with an incarcerated parent improves parent and child attachment.

In addition, incarcerated parents shall continue to be involved with case planning, to the extent possible. Each state provides rights of incarcerated parents in relation to the legal welfare system. While terminating the rights of some incarcerated parents is appropriate, the implications should be thoroughly evaluated considering the majority of incarcerated parents in prison are in for non-violent crimes and will be re-united with their children once they are released from prison.¹⁵⁴

The following should be done in relation to incarcerated parents:

- Involve incarcerated parents in DFS case planning;
- Engage in exceptional communication (early and ongoing) by all stakeholders;
- Provide clear and timely documentation by all stakeholders;
- Provide immediate assessment of problems that have brought the child and family to attention;
- Be aware of services available to inmates; and
- Provide ongoing support.

Preservation of parental rights is both the law and best practice, but it can also:

- Sustain the parent/child bond;
- Decrease the recidivism rate (parents are less likely to re-offend, and repeated parental incarceration also increases the likelihood that the child will also commit crimes leading to incarceration as a teenager or adult);
- Help parents maintain their parental rights; and
- Help family reunification upon reentry.

Once a parent is located:

- Send an introduction letter to the inmate with your contact info;
- Contact a prison social worker;
- Learn about all programs and services available to inmates;
- Arrange a visit to meet with the parent;
- Document information on probable length of stay;
- Be sure DFS includes the parent in case plan preparation and case plan;
- Ensure that the Court and DFS have the parent's address at the facility and their inmate number; and
- Understand the mail policy, so you do not send things that are not allowed.

[NEED MORE?](#)

Wyoming Child Welfare Legal Resource Manual, Second Edition, available at <http://www.Courts.state.wy.us/ViewPage.aspx?PageURL=CJP/benchbook.htm>.

The Annie E. Casey Foundation, *When Parents are Incarcerated* (2011), available at <http://www.aecf.org/~media/Pubs/Topics/Special%20Interest%20Areas/Children%20with%20Incarcerated%20Parents/WhenAParentIsIncarceratedPrimer/WhenAParentIsIncarceratedPrimer.pdf>.

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¹⁵⁴ THE ANNIE E. CASEY FOUNDATION, *WHEN PARENTS ARE INCARCERATED* (2011), AVAILABLE AT [HTTP://WWW.AECF.ORG/~MEDIA/PUBS/TOPICS/SPECIAL%20INTEREST%20AREAS/CHILDREN%20WITH%20INCARCERATED%20PARENTS/WHENAPARENTISINCARCERATEDPRIMER/WHENAPARENTISINCARCERATEDPRIMER.PDF](http://www.aecf.org/~media/Pubs/Topics/Special%20Interest%20Areas/Children%20with%20Incarcerated%20Parents/WhenAParentIsIncarceratedPrimer/WhenAParentIsIncarceratedPrimer.pdf).

Section Twenty: Affordable Care Act and Children in the Juvenile Court System *P3-20.00.00*



UNDERSTAND THE AFFORDABLE CARE ACT (ACA) AND HOW IT IMPACTS YOUR CLIENTS

This section provides an overview of the Affordable Care Act (ACA), and describes the high-level implications to children in the Juvenile Court system.

Background P3-20.01.00

The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), is a United States federal statute signed into law on March 23, 2010. The ACA was enacted with the goals of increasing the quality and affordability of health insurance, lowering the uninsured rate by expanding public and private insurance coverage, and reducing the costs of healthcare for individuals and the government. It included mandates, subsidies, and insurance exchanges with the goal of increasing coverage and affordability. The ACA has impacts to children in the legal welfare system, as discussed below.

Provisions Relative to Child Welfare Practices P3-20.02.00

“Provisions relevant to child welfare practices include:

- Extended Medicaid coverage to former foster care children younger than age 26;
- A required state Children's Health Insurance Program (CHIP) plan, beginning January 1, 2014, to use modified adjusted gross income (MAGI) and household income to determine CHIP eligibility;
- A requirement for a state to treat any child as a targeted low-income child eligible for CHIP, who is determined to be ineligible for Medicaid, as a result of the elimination of an income disregard based on expense or type of income;
- Amended Title V of the Social Security Act (Maternal and Child Health Services) provides grants to eligible entities for early childhood home visitation programs;
- Requirement for a case review system for children aging out of foster care and independent living programs to include information about the importance of having a health-care power-of-attorney in transition planning;
- Reauthorized appropriations for health centers to serve medically underserved populations;
 - Reauthorized appropriations for Fiscal Year (FY) 2010-2014 for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical care;
 - Authorization for the award of grants and cooperative agreements for demonstration projects for the provision of coordinated and integrated services to special populations through the co-location of primary and specialty

care services in community-based mental and behavioral health settings;

- Establishment of a Pregnancy Assistance Fund for grants to States to assist pregnant and parenting teens and women;
- Increased from \$10,000 to \$13,170 the dollar limitation on the tax credit for adoption expenses and the tax exclusion for employer-provided adoption assistance, allowed an inflation adjustment to such limitation after 2010, and made the credit refundable”¹⁵⁵

[NEED MORE?](#)

United States Department of Health & Human Services, Administration for Children & Families, Child Welfare Information Gateway, https://www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federalLegislation.viewLegis&id=141

Centers for Medicare & Medicaid Services, <http://www.cms.gov/about-cms/aca/affordable-care-act-in-action-at-cms.html>

The Children’s Partnership, <http://www.childrenspartnership.org/publications/health-reform-e-update/621-aca-enrollment-a-foster-youth>.

Children’s Monitor, <http://childrensmonitor.wordpress.com/2013/07/12/cms-issues-final-rule-on-the-aca-and-foster-care/>.

Georgetown University Health Policy Institute: Center for Children and Families, <http://ccf.georgetown.edu/all/foster-care-children-the-affordable-care-act-report-ccf-community-atalyst/>.

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¹⁵⁵ UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN & FAMILIES, *CHILD WELFARE INFORMATION GATEWAY* (NOV. 25, 2013), [HTTPS://WWW.CHILDWELFARE.GOV/SYSTEMWIDE/LAWS_POLICIES/FEDERAL/INDEX.CFM?EVENT=FEDERALLEGISLATION.VIEWLEGIS&ID=141](https://www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federalLegislation.viewLegis&id=141).